UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, *Plaintiff*, v. COINBASE, INC. AND COINBASE GLOBAL, INC., *Defendants*.	23 Civ. 4738 (KPF)

DECLARATION OF DAVID P.T. WEBB IN SUPPORT OF COINBASE'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS

I, David P.T. Webb, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 as follows:

1. I am an attorney duly admitted to practice in the United States District Court for the Southern District of New York. I am an associate at the law firm Wachtell, Lipton, Rosen & Katz, counsel to Defendants Coinbase, Inc. and Coinbase Global, Inc. (together, "Coinbase"). I submit this declaration in support of Coinbase's Motion to Compel Production of Documents.

2. Attached as Exhibit A is a true and correct copy of Defendants' First Request for Production of Documents Directed to Plaintiff Securities and Exchange Commission, dated April 23, 2024.

3. Attached as Exhibit B is a true and correct copy of Plaintiff's Responses and Objections to Defendants' First Request for Production of Documents, dated May 23, 2024.

4. Attached as Exhibit C is a true and correct copy of a letter from Kevin S. Schwartz to Nicholas Margida, dated June 25, 2024.

5. Attached as Exhibit D is a true and correct copy of a letter from Nicholas Margida to Kevin S. Schwartz, dated July 2, 2024.

6. Attached as Exhibit E is a true and correct copy of ECF No. 67, filed in *SEC* v. *Ripple Labs, Inc.*, et al., No. 20-cv-10832 (AT) (SN) (S.D.N.Y.) on March 15, 2021.

7. Attached as Exhibit F is a true and correct copy of the Rule 45 subpoena, and accompanying materials, served on Mr. Gary Gensler, dated June 14, 2024.

8. Attached as Exhibit G is a true and correct copy of Gary Gensler's *Remarks Before the Aspen Security Forum*, dated August 3, 2021, and available at https://www.sec.gov/newsroom/speeches-statements/gensler-aspen-security-forum-2021-08-03.

9. Attached as Exhibit H is a true and correct copy of the United States Securities and Exchange Commission, Office of Strategic Hub for Innovation and Financial Technology's webpage *Request Form for FinTech-Related Meetings and Other Assistance*, available at https://www.sec.gov/finhub-form#no-back.

10. Attached as Exhibit I is a true and correct copy of ECF No. 831-76, filed in *SEC* v. *Ripple Labs, Inc.,* et al., No. 20-cv-10832 (AT) (SN) (S.D.N.Y.) on June 13, 2023.

11. Attached as Exhibit J is a true and correct copy of the Wells Submission on Behalf of Coinbase Global, Inc. and Coinbase, Inc., submitted to the United States Securities and Exchange Commission on April 19, 2023.

12. Attached as Exhibit K is a true and correct copy of the Ankush Khardori's article *Can Gary Gensler Survive Crypto Winter? D.C.'s top financial cop on Bankman-Fried blowback*, published in New York Magazine on February 23, 2023, and available at https://nymag.com/intelligencer/2023/02/gary-gensler-on-meeting-with-sbf-and-his-crypto-crackdown.html.

13. Attached as Exhibit L is a true and correct copy of Plaintiff's First Request for Production, dated April 29, 2024.

14. Attached as Exhibit M is a true and correct copy of a letter from the United States Securities and Exchange Commission, Division of Corporation Finance, to Brian Armstrong, dated December 7, 2020.

15. Attached as Exhibit N is a true and correct, excerpted copy of the transcript for *Game Stopped? Who Wins and Loses When Short Sellers, Social Media, and Retail Investors Collide, Part III*, a Virtual Hearing Before the Committee on Financial Services, United States House of Representatives, dated May 6, 2021, and available in full at https://tinyurl.com/mtrnkbn2.

16. Attached as Exhibit O is a true and correct copy of Plaintiff's Responses and Objections to Defendants' First Set of Requests for Admission, dated July 22, 2024.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: July 23, 2024
New York, New York

By: /s/ *David P.T. Webb*
David P.T. Webb

EXHIBIT A

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, *Plaintiff*, v. COINBASE, INC. AND COINBASE GLOBAL, INC., *Defendants*.	23 Civ. 4738 (KPF)

DEFENDANTS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO PLAINTIFF SECURITIES AND EXCHANGE COMMISSION

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, and the definitions and instructions set forth below, Defendants Coinbase, Inc. and Coinbase Global, Inc. (together, "Coinbase" or "Defendants"), by and through their undersigned counsel, hereby request that Plaintiff the Securities and Exchange Commission (the "SEC," "Commission," or "Plaintiff") produce documents responsive to the following requests, within 30 days from the date of service, at the offices of Wachtell, Lipton, Rosen & Katz, 51 West 52nd Street, New York, New York 10019, or at such other time and place as may be agreed among counsel or ordered by the Court.

DEFINITIONS

The following definitions shall apply to the Defendants' First Request for Production of Documents Directed to Plaintiff the Securities and Exchange Commission (the "Requests"):

1. "Action" means the above-captioned civil action.

2. "BlackRock, Inc." means BlackRock, Inc., as well as any parents, subsidiaries, affiliates, predecessors, successors, assigns, members, principals, partners, directors, boards, committees, subcommittees, officers, employees, agents, representatives, consultants, attorneys, or anyone else purporting to act on its behalf.

3. "Coinbase" means Coinbase, Inc., Coinbase Global, Inc., and any of their affiliates, subsidiaries, divisions, predecessors and successors, and any of their respective officers, directors, employees, agents, or attorneys.

4. "Coinbase Platform" means Coinbase's digital asset spot exchange.

5. "Coinbase Prime" means the service described in the Coinbase Prime Product Guide. *See Coinbase Prime Product Guide*, Coinbase (2022), https://tinyurl.com/mu89cran.

6. "Communication" or "communications" means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise), whether orally or in writing, or by any other means or medium, between or among two or more Persons or entities including but not limited to spoken words, inquiries, discussions, conversations, conferences, interviews, negotiations, agreements, reports, meetings, correspondence, letters, electronically transmitted messages (*e.g.*, email, text messages, instant messaging), postings on Internet bulletin boards, or other forms of written, verbal or electronic intercourse, however transmitted, ESI (as defined below), and documents, as defined herein.

7. "Complaint" means the Complaint filed in the Action on June 6, 2023, and/or any subsequent amendments.

8. "Contact List" has the meaning assigned to this term in Section 3.2.9.4 of the SEC Enforcement Manual.

9. "Digital Asset" means any digital asset, including any cryptocurrency, virtual currency, or other blockchain-based coin or token.

10. "Digital Asset Platform" means any exchange or other platform on which Digital Assets are offered and sold.

11. "Document" or "documents" shall have the broadest meaning permitted under the Federal Rules of Civil Procedure and shall include, without limitation, the original and all non-identical copies of any handwritten, printed, typed, recorded, or other graphic material, or ESI (as defined below), of any kind and nature, including all drafts and transcriptions thereof, however produced or reproduced, and including but not limited to accounting materials, accounts, agreements, analyses, appointment books, books of account, calendars, catalogs, checks, communications (as defined herein), computer data, computer disks, contracts, correspondence, date books, diaries, diskettes, drawings, email messages, faxes, guidelines, instructions, inter-office communications, invoices, letters, logs, manuals, memoranda, minutes, notes, opinions, payments, plans, purchase confirmations, receipts, records, regulations, reports, sound recordings, spreadsheets, statements, studies, surveys, tickets, timesheets, trade records, vouchers, word processing materials (however stored or maintained), and all other means by which information is stored for retrieval in fixed form.

12. "Document Index" has the meaning assigned to this term in Section 3.2.9.4 of the SEC Enforcement Manual.

13. "ESI" means information that is stored in an electronic format, regardless of the media or whether it is in the original format in which it was created, and that is retrievable in perceivable form and includes but is not limited to metadata, system data, deleted data, and fragmented data.

14. "Government Entity" means any federal, state, or foreign agency or authority, or any current or former officer, employee, or agent thereof. For the avoidance of doubt, Government Entity includes, but is not limited to, the U.S. Commodity Futures Trading Commission ("CFTC"), the U.S. Department of Justice, the U.S. Department of the Treasury, the Financial Crimes

Enforcement Network ("FinCEN"), the U.S. Internal Revenue Service, and the New York Department of Financial Services ("DFS").

15. "IEX Group, Inc." or "Investors' Exchange LLC" means IEX Group, Inc. or Investors' Exchange LLC, as well as any parents, subsidiaries, affiliates, predecessors, successors, assigns, members, principals, partners, directors, boards, committees, subcommittees, officers, employees, agents, representatives, consultants, attorneys, or anyone else purporting to act on their behalf.

16. "Investigation" means the investigation(s) of individuals and entities that resulted in or contributed to the filing of the Complaint, including but not limited to the SEC investigation captioned *In the Matter of Coinbase, Inc.* (HO-14315).

17. "Named Coinbase Services" means Coinbase Prime and Coinbase's Staking Services.

18. "Named Digital Assets" means SOL, ADA, MATIC, FIL, SAND, AXS, CHZ, FLOW, ICP, NEAR, VGX, and DASH.

19. "Oral Argument" means the parties' January 17, 2024 oral argument before the Honorable Katherine Polk Failla on Coinbase's Motion for Judgment on the Pleadings.

20. "Person" means any natural person or individual, or any firm, partnership (general or limited), limited liability company, proprietorship, corporation, unincorporated association, trust, joint venture, or any other legal or governmental entity, organization, or body of any type whatsoever, as well as all agents, officers, directors, boards, committees, subcommittees, employees, consultants, representatives, or instrumentalities thereof.

21. "Plaintiff," "SEC," "Commission," "you," or "your" means the U.S. Securities and Exchange Commission, including any Divisions, Commissioners, Commission Staff, employees, subsidiaries, or individuals or entities acting on its behalf.

22. "Prometheum, Inc." means Prometheum, Inc., Prometheum Ember ATS Inc., or Prometheum Capital LLC, as well as any parents, subsidiaries, affiliates, predecessors, successors, assigns, members, principals, partners, directors, boards, committees, subcommittees, officers, employees, agents, representatives, consultants, attorneys, or anyone else purporting to act on their behalf.

23. "Securitize, Inc.," "Securitize LLC," or "Securitize Markets, LLC" means Securitize, Inc., Securitize LLC, or Securitize Markets, LLC, as well as any parents, subsidiaries, affiliates, predecessors, successors, assigns, members, principals, partners, directors, boards, committees, subcommittees, officers, employees, agents, representatives, consultants, attorneys, or anyone else purporting to act on their behalf.

24. "Staking as a Service" means services offered to individuals to facilitate the staking of their digital assets to a blockchain with a proof-of-stake consensus mechanism.

25. "Staking Services" means the services offered to individual Coinbase users through the "Coinbase Earn" program.

26. "Valkyrie Investments Inc.," "Valkyrie Digital Assets LLC," or "Valkyrie Funds LLC" means Valkyrie Investments Inc., Valkyrie Digital Assets LLC, or Valkyrie Funds LLC, as well as any parents, subsidiaries, affiliates, predecessors, successors, assigns, members, principals, partners, directors, boards, committees, subcommittees, officers, employees, agents, representatives, consultants, attorneys, or anyone else purporting to act on their behalf.

27. The terms "concerning," "regarding," "with regard to," "relating to," and "referring to" shall be read and applied as interchangeable and shall be construed in the broadest sense permitted, including by Local Civil Rule 26.3, to mean discussing, supporting, describing, concerning, regarding, with regard to, relating to, referring to, pertaining to, containing, analyzing, evaluating, studying, recording, memorializing, reporting on, commenting on, reviewed in connection or in conjunction with, evidencing, setting forth, contradicting, refuting, considering, recommending, or constituting, in whole or in part.

28. The language of the Requests shall be read liberally, so as to be inclusive rather than exclusive, and in particular: (i) the use of the singular shall be deemed to include the plural and vice versa, and the use of one gender shall include the other; (ii) the terms "and" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of a Request all documents that might otherwise be construed as outside its scope; (iii) the present tense includes the past and future tenses, and vice versa; (iv) the terms "any" or "all" shall mean "any and all," "each and every," and "anyone and everyone"; and (v) "include," "includes," and "including" shall mean "including but not limited to."

INSTRUCTIONS

The following instructions shall apply to the Requests contained herein. The Requests call for the production of all responsive documents that are in your possession, custody, or control, wherever located, regardless of whether they are possessed directly by you or any of your agents, representatives, employees, accountants, attorneys, or other persons acting or purporting to act on your behalf.

1. Unless otherwise specified, the time period for these Requests is January 1, 2017 through June 6, 2023.

2. A Request for a document shall be deemed to include a request for any non-identical copies or drafts of the document, as well as all transmittal sheets, cover letters, exhibits, enclosures or attachments to the document, in addition to the document itself. Any document not produced in electronic format is to be produced in its original file folder, with all labels or similar markings intact and included, and with the name of the Person from whose file it was produced.

3. If it is not possible to produce any document called for by a Request, or if any part of a Request is objected to, the reasons for the failure to produce the documents or the objection should be stated specifically as to all grounds.

4. If any portion of any document or communication is responsive to any Request, the entire document must be produced.

5. You must respond to each Request separately and fully, unless it is objected to, in which event the reasons for the objection should be specifically and separately stated. If you object to part of a Request, you must produce all documents and communications responsive to the part of the Request to which you did not object.

6. If you claim any form of privilege or protection or other reason, whether based on statute or otherwise, as a ground for not producing requested documents, you shall furnish a privilege log identifying each document or communication for which the privilege or protection is claimed in compliance with Federal Rule of Civil Procedure 26(b)(5), and/or such other parameters as may be agreed between the parties.

7. Requests are not intended to limit or modify other Requests and should not be interpreted as limiting or modifying other Requests.

8. If you contend that any Request is overly broad and/or unduly burdensome, identify all aspects of the Request that are overly broad or unduly burdensome and produce the documents and communications that are not subject to this contention.

9. If there are no documents or communications responsive to any particular Request or subpart thereof, you shall state so in writing.

10. If any document or communication responsive to any Request has been destroyed or lost, you shall notify Defendants of that fact and shall thereafter meet and confer with Defendants regarding the information to be provided with respect to such documents and communications.

11. Any responsive documents or communications shall be produced in accordance with any confidentiality or protective order and any order concerning forms and format for document productions entered by the Court in this Action.

12. These Requests are continuing and require further and supplemental production by you whenever you locate, acquire, or create additional responsive documents or communications between the time of the initial production hereunder and the time of the trial in this Action.

13. Pursuant to Rule 26(e) of the Federal Rules of Civil Procedure, you are instructed to promptly amend your responses to the Requests if you obtain information on the basis of which: (i) you know that the response was incorrect when made; or (ii) you know that the response, though correct when made, is no longer true, and failure to amend the response would be, in substance, a knowing concealment.

14. Defendants serve these Requests without prejudice to their right to serve additional requests for the production of documents.

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST NO. 1.

Your complete investigative file in connection with the Investigation, including but not limited to the following:

a. All subpoenas, voluntary document requests, and other requests to provide documents, testimony, or an interview, including Documents concerning the terms of any testimony or interview (including proffer agreements) of any Person or entity from whom you gathered information in connection with the Investigation;

b. All Documents received in response to any such requests, or otherwise obtained by you from third parties or third-party sources;

c. All transcripts, transcript exhibits, recorded testimony, verbatim notes, declarations, affidavits, witness interview notes, and memos and witness statements;

d. All Documents concerning any internal or external Communications concerning the Investigation. As examples, but without limitation, this category includes all correspondence (including email), cover letters, subpoenas, witness statements, declarations, affidavits, memoranda, summaries, or notes, and any drafts and versions of the foregoing, sent to, or received from, any witness, potential witness, entities, or their counsel. For the avoidance of doubt, this Request includes the formal order memorandum, the action memorandum, and emails and other communications between the staff of the Enforcement Division and SEC Commissioners or other SEC Divisions and their respective staff;

e. All Documents memorializing, evidencing, or concerning any Communications

you had with any Government Entity and/or any other third party relating to the Investigation, including but not limited to any written submissions or presentations made by third parties;

f. All Documents or Communications concerning a cooperation agreement between you and any Person or entity from whom you gathered information in connection with the Investigation; and

g. Your Contact List and Document Index for the Investigation, as contemplated in Section 3.2.9.4 of the SEC Enforcement Manual.

REQUEST NO. 2.

All Documents and Communications concerning the Coinbase Platform, the Named Digital Assets, the Named Coinbase Services, or the subject matter of the Investigation or the Action, including all Communications with any Person or entity not party to this Action concerning the foregoing and any formal, informal, or voluntary requests by you for documents or information from any Person concerning the Coinbase Platform, the Named Digital Assets, the Named Coinbase Services, all Documents or Communications you received in response to such formal, informal, or voluntary requests, and all analyses (including but not limited to any regression and correlation, or event study analysis) whether done by you or on your behalf relating to the Coinbase Platform, any of the Named Digital Assets or Named Coinbase Services, the market performance of any of the Named Digital Assets relative to other Digital Assets or to public statements by Coinbase and/or the alleged issuers or promoters of such Named Digital Assets, and the size and value of sales of any of the Named Digital Assets over time.

REQUEST NO. 3.

Documents and/or Communications sufficient to establish when the SEC first learned of the Coinbase Platform, the Named Digital Assets, and the Named Coinbase Services, and when

the SEC first learned that each of the Named Digital Assets had been listed or was planned to be listed on the Coinbase Platform, without limitation as to the applicable time period.

REQUEST NO. 4.

All Communications with, and Documents concerning Communications with, third parties (including any Government Entity) concerning the application of federal laws, regulations, or rules (including, but not limited to, the Securities Act of 1933 and the Securities Exchange Act of 1934) to the Coinbase Platform, the Named Digital Assets, or the Named Coinbase Services.

REQUEST NO. 5.

All Communications with, and Documents concerning Communications with, third parties (including any Government Entity) concerning any investigation by a Government Entity concerning Coinbase, the Coinbase Platform, any of the Named Digital Assets, or any of the Named Coinbase Services.

REQUEST NO. 6.

All Communications with, and Documents concerning Communications with, any Government Entity, including the CFTC, or with the Financial Industry Regulatory Authority (FINRA), relating to the allegations in the Complaint, the Investigation, Staking as a Service, Digital Assets, or Digital Asset Platforms, including but not limited to:

a. Any factual Documents prepared for or by the Commission, any Commissioner, and/or any Commission Staff or otherwise in the Commission Staff's custody or control, relating to the regulatory and/or enforcement authorities of the SEC and/or another Government Entity, including the scope of regulatory and/or enforcement authorities as between the SEC and another Government Entity or potential or proposed legislation relating to the regulatory and/or enforcement authorities of the SEC and/or another Government Entity; and

b. Any external Communications by the Commission, any Commissioner, and/or any Commission Staff, whether formal or informal, relating to the regulatory and/or enforcement authorities of the SEC and/or another Government Entity, including the scope of regulatory and/or enforcement authorities as between the SEC and another Government Entity or potential or proposed legislation relating to the regulatory and/or enforcement authorities of the SEC and/or another Government Entity.

REQUEST NO. 7.

All Communications with, and Documents concerning Communications with, journalists or other employees or affiliates of news or media organizations concerning Coinbase, this Action, the Investigation, the Coinbase Platform, Digital Asset Platforms, any of the Named Digital Assets, or any of the Named Coinbase Services.

REQUEST NO. 8.

All Communications with, and Documents concerning Communications with, any alleged developers of, alleged issuers of, or Persons otherwise affiliated with any of the Named Digital Assets or their associated blockchain networks, including any Documents or information provided to you by any alleged developers of, alleged issuers of, or Persons otherwise affiliated with any of the Named Digital Assets, their affiliated blockchain networks, or their counsel.

REQUEST NO. 9.

All Documents and Communications concerning any discussions, instructions, advice, inquiries, or other Communications between the SEC and any Person concerning that Person's actual, planned, or potential business or other relationship with Coinbase.

REQUEST NO. 10.

Without limitation as to time period, all Communications with, and Documents

concerning Communications with: Prometheum, Inc., Martin Kaplan, Aaron Kaplan, or Benjamin Kaplan; Securitize, Inc.; Securitize LLC; or Securitize Markets, LLC.

REQUEST NO. 11.

All Communications with, and Documents concerning Communications with, IEX Group, Inc. or Investors' Exchange LLC concerning Coinbase, Digital Assets, or Digital Asset Platforms.

REQUEST NO. 12.

Without limitation as to time period, all Communications with, and Documents concerning Communications with, any Person concerning: (i) any actual, planned, or potential registration by that Person as an exchange, broker, dealer, clearing agency, alternative trading system, or custodian that would or could facilitate the offer, sale, or custody of Digital Assets or any product or service relating to Digital Assets, including but not limited to the requirements and process for or viability of such registration; or (ii) the registration with the SEC of any exchange-traded product that holds or references Digital Assets. For the purposes of this Request, "Person" includes but is not limited to BlackRock, Inc., Valkyrie Investments Inc., Valkyrie Digital Assets LLC, and Valkyrie Funds LLC.

REQUEST NO. 13.

All Documents and Communications concerning (i) the June 14, 2018 speech by former SEC Director of the Division of Corporation Finance William Hinman titled "Digital Asset Transactions: When Howey Met Gary (Plastic)" ("Hinman Speech"), (ii) FinHub's April 2019 "Framework for 'Investment Contract' Analysis of Digital Assets," and (iii) *Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO*, Exchange Act Release No. 81207 (July 25, 2017), including but not limited to all Communications with any blockchain network or representative thereof and all Documents and Communications, including internal Communications, analyses, and other materials, that were prepared, reviewed, or relied upon by

any current or former SEC Commissioner, Division Director, or Staff member in reaching the conclusions and observations reflected in these statements, including drafts of the statements and analyses prepared or commented upon by SEC Staff.

REQUEST NO. 14.

All Documents and Communications concerning any public statements by the Commission or any SEC Division, Commissioner, or Staff member concerning the Named Digital Assets or Digital Asset Platforms, including but not limited to any internal or external Communications concerning such public statements and any analyses or other materials that were prepared or relied upon in reaching the conclusions and observations reflected in such public statements, including all Documents and Communications reflecting the Persons involved in such Communications or analyses.

REQUEST NO. 15.

All Documents and Communications concerning whether Digital Assets or transactions in Digital Assets are "investment contract[s]" within the meaning of the Securities Act of 1933 or the Securities Exchange Act of 1934, including Documents and Communications concerning the application of *SEC* v. *W.J. Howey Co.*, 328 U.S. 293 (1946), to Digital Assets or transactions in Digital Assets.

REQUEST NO. 16.

All Documents and Communications concerning (i) the role of a Digital Asset's ecosystem in the application of the federal securities laws to that asset, including but not limited to determining whether transactions in an asset constitute transactions in investment contracts or other securities; or (ii) the ecosystems of the Named Digital Assets, including but not limited to the components of such ecosystems, the identities of the alleged developers, issuers, and

promoters affiliated with such ecosystems, and any decentralized applications or business platforms related to such ecosystems.

REQUEST NO. 17.

All Documents and Communications relating to your assertion during Oral Argument that when someone "purchases tokens like [the Named Digital Assets], like these 13 examples . . . they are investing into the network behind it"—that is, "the ecosystem." *See* Jan. 17, 2024 Hr'g Tr. at 21:20-22:5; *see also id.* at 57:17-21.

REQUEST NO. 18.

All Documents and Communications relating to (i) Bitcoin's ecosystem; or (ii) your assertion during Oral Argument that "there's no ecosystem behind" Bitcoin. *See* Jan. 17, 2024 Hr'g Tr. at 30:7-15.

REQUEST NO. 19.

All Documents and Communications concerning the size, value, growth, or importance of the Digital Asset industry or Digital Asset Platforms.

REQUEST NO. 20.

All Documents and Communications relating to all risks of loss that you contend are relevant to whether Coinbase's Staking Services involves the offer and sale of investment contracts.

REQUEST NO. 21.

All Documents and Communications relating to all managerial efforts that you contend Coinbase undertakes in providing the Staking Services.

REQUEST NO. 22.

All Documents and Communications concerning potential or proposed legislation relating to the regulatory and/or enforcement authorities of the SEC and/or another Government Entity with respect to Digital Assets or Digital Asset Platforms.

REQUEST NO. 23.

All Documents and Communications concerning any meeting or call involving one or more Commissioner concerning Coinbase, the Coinbase Platform, or any of the Named Digital Assets or Named Coinbase Services, including a list of the attendees of any such meeting or call.

REQUEST NO. 24.

All Documents and Communications from the SEC to Coinbase concerning (i) Coinbase listing any Digital Assets or the sale of any of the Named Coinbase Services; or (ii) Coinbase's operations.

REQUEST NO. 25.

All Documents and Communications concerning any policy, guidance, clearance, or other permission or restriction given to current or former SEC Commissioners or employees concerning the purchase, use, ownership, or trading of Digital Assets or use of Digital Asset Platforms, including the purchase, use, ownership, or trading of any of the Named Digital Assets or Named Coinbase Services by such Person or their family members, including but not limited to general SEC policies and Communications with any Person.

REQUEST NO. 26.

To the extent such Documents and Communications concern any Communications, analyses, or other materials regarding Coinbase, any of the Named Digital Assets, or any of the Named Coinbase Services, your investigative files in connection with any investigations by the Commission or Commission Staff relating to the following litigation matters and all Documents and Communications produced to or by the Commission in discovery in the following litigation matters:

a. *SEC* v. *Kik Interactive Inc.*, Case No. 19-cv-5244 (S.D.N.Y.);

b. *SEC* v. *Telegram Grp. Inc. and TON Issuer Inc.*, Case No. 19-cv-9439 (S.D.N.Y.);

c. *SEC* v. *Ripple Labs, Inc. et al.*, Case No. 20-cv-10832 (S.D.N.Y.);

d. *SEC* v. *LBRY, Inc.*, Case No. 21-cv-260 (D.N.H.);

e. *SEC* v. *Wahi et al.*, Case No. 2:22-cv-1009 (W.D. Wash.);

f. *SEC* v. *Binance Holdings Ltd. et al.*, Case No. 23-cv-1599 (D.D.C.);

g. *SEC* v. *Bittrex, Inc. et al.*, Case No. 23-cv-580 (W.D. Wash.);

h. *SEC* v. *Genesis Global Capital, LLC and Gemini Tr. Co., LLC*, Case No. 23-cv-287 (S.D.N.Y.);

i. *SEC* v. *Terraform Labs PTE Ltd. and Kwon*, Case No. 23-cv-1346 (S.D.N.Y.);

j. *SEC* v. *Payward, Inc. and Payward Ventures, Inc.*, Case No. 23-cv-6003 (N.D. Cal.); and

k. *SEC* v. *Payward Ventures, Inc. (D/B/A Kraken) and Payward Trading, Ltd. (D/B/A Kraken)*, Case No. 23-cv-588 (N.D. Cal.).

REQUEST NO. 27.

All Documents and Communications concerning Coinbase's direct public offering or registration statement on Form S-1 (including any drafts of such registration statement), including but not limited to Documents and Communications concerning the application or potential application of the federal securities laws to Coinbase's business or operations.

REQUEST NO. 28.

All Documents and Communications concerning SEC Chair Gary Gensler's public remarks about Digital Assets, Digital Asset Platforms, and Staking as a Service, without limitation as to the applicable time period, including but not limited to:

a. Chair Gensler's May 6, 2021 testimony before the United States House Committee on Financial Services;

b. Chair Gensler's May 7, 2021 appearance on CNBC;

c. Chair Gensler's May 26, 2021 testimony before the United States House Subcommittee on Financial Services and General Government;

d. Chair Gensler's August 3, 2021 remarks before the Aspen Security Forum;

e. Chair Gensler's September 21, 2021 interview with the *Washington Post*;

f. Chair Gensler's October 5, 2021 testimony before the United States House Committee on Financial Services;

g. Chair Gensler's August 19, 2022 opinion piece published by the *Wall Street Journal*, titled "The SEC Treats Crypto Like the Rest of the Capital Markets";

h. Chair Gensler's December 7, 2022 interview with Yahoo! Finance;

i. Chair Gensler's interview with Ankush Khardori, as reported in *Intelligencer's* February 23, 2023 article, "Can Gary Gensler Survive Crypto Winter? D.C.'s Top Financial Cop on Bankman-Fried Blowback";

j. Chair Gensler's interview with CNBC's *Squawk Box*, as reported in CNBC's February 10, 2023 article, "SEC's Gary Gensler on Kraken Staking Settlement: Other Crypto Platforms Should take Note of This";

k. Chair Gensler's March 29, 2023 testimony before the United States House Appropriations Subcommittee on Financial Services and General Government;

l. Chair Gensler's statements regarding Digital Assets during "Office Hours with Gary Gensler" including but not limited to the episodes from August 16, 2021, July 28, 2022, August 4, 2022, October 3, 2022, February 9, 2023, and April 27, 2023;

m. Chair Gensler's April 18, 2023 testimony before the United States House Committee on Financial Services;

n. Chair Gensler's interview with CNBC's *Squawk Box*, as reported in CNBC's June 6, 2023 article, "SEC Chair Gensler doubts the need for more digital currency";

o. Chair Gensler's interview with the *Wall Street Journal*, as reported in the June 8, 2023 article, "SEC's Gary Gensler Had Crypto in His Sights for Years. Now He's Suing Binance and Coinbase.";

p. Chair Gensler's June 8, 2023 remarks before the Piper Sandler Global Exchange & Fintech Conference;

q. Chair Gensler's interview with the *Wall Street Journal*, as broadcast in the June 14, 2023 podcast episode, "SEC Chair Gary Gensler on His Crypto Crackdown";

r. Chair Gensler's September 12, 2023 testimony before the United States Senate Committee on Banking, Housing, and Urban Affairs;

s. Chair Gensler's September 27, 2023 testimony before the United States House Committee on Financial Services; and

t. Chair Gensler's statements concerning Digital Assets or Digital Asset Platforms made prior to his tenure as SEC Chair.

REQUEST NO. 29.

Without limitation as to time period, all Documents and Communications concerning the Petition for Rulemaking submitted by Coinbase on July 21, 2022, any comment letters submitted by Coinbase concerning its Petition for Rulemaking, or the Commission's Order denying Coinbase's Petition for Rulemaking issued on December 15, 2023, including any Communications with any third parties (including any Government Entity) concerning Coinbase's Petition for Rulemaking or the Commission's Order.

REQUEST NO. 30.

Without limitation as to time period, all Documents and Communications concerning the comment letters sent to Coinbase Global, Inc. by the Commission dated September 22, 2023 and

April 17, 2024 regarding Coinbase Global, Inc.'s Form 10-K for the year ended December 31, 2023, Form 10-K for the year ended December 31, 2022, Form 10-Q for the period ended June 30, 2023, Form 8-K filed January 10, 2023, and Form 8-K filed May 4, 2023 (File No. 001-40289), and any subsequent correspondence relating thereto.

REQUEST NO. 31.

All Documents and Communications that you intend to use or otherwise rely upon for any purpose in this Action, including: (i) all Documents and Communications identified, quoted, or referenced in the Complaint, indicating the paragraph(s) of the Complaint to which each Document and Communication relates; and (ii) all Documents and Communications that were created, reviewed, considered, or relied upon by you in preparing the Complaint, including, without limitation, any computations or analyses prepared by you underlying any assertions in the Complaint.

REQUEST NO. 32.

All Documents and Communications relating to any Person that you have retained or intend to retain as an expert witness to testify or provide an affidavit or report in this Action, including: (i) a curriculum vitae for the expert; (ii) any Documents or Communications relied on, referred to, or consulted by the expert in formulating any opinions the expert intends to offer in any affidavit, report, or testimony in this Action; (iii) any Documents or Communications created by the expert related to this Action; (iv) all engagement letters or agreements concerning the expert's retention or employment in connection with this Action; (v) all articles, books, book chapters, speeches, and other presentations created by the expert during the past ten years that relate in any way to the opinions or conclusions reached by the expert in connection with the Action; (vi) all testimony given by and reports submitted by the expert as an expert witness during the past five years; and

(vii) all Documents and Communications provided, prepared, received, reviewed, or made available to the expert or a representative of the expert.

REQUEST NO. 33.

All Documents and Communications produced by any third parties in connection with this Action (through subpoena, agreement, or otherwise).

REQUEST NO. 34.

(a) All Documents referenced in Plaintiff's initial disclosures, and (b) all Documents and Communications relating to any Person listed as an individual or an entity likely to have discoverable information in Plaintiff's initial disclosures and that also relate to any issue in this Action.

Dated: April 23, 2024
New York, New York

WACHTELL, LIPTON, ROSEN & KATZ

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CERTIFICATE OF SERVICE

I, William Savitt, hereby certify that on April 23, 2024, I caused the foregoing to be served via electronic mail upon counsel of record in the above-captioned action.

/s/ *William Savitt*
William Savitt

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, **Plaintiff,** **-against-** **COINBASE, INC. AND COINBASE GLOBAL, INC.** **Defendants.**	**23 Civ. 04738 (KPF)**

PLAINTIFF'S RESPONSES AND OBJECTIONS TO DEFENDANTS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure ("Federal Rules") and the Local Rules of the U.S. District Court for the Southern District of New York ("Local Civil Rules"), Plaintiff Securities and Exchange Commission (the "Commission," "SEC," or "Plaintiff") hereby responds to Defendants Coinbase, Inc. and Coinbase Global, Inc.'s (collectively, "Defendants" or "Coinbase") First Request for Production of Documents to Plaintiff ("Requests"). The Commission's responses and objections to the Requests are made to the best of its present knowledge, information, and belief. These responses and objections are made without prejudice to the Commission's right to revise or supplement its responses and objections as appropriate and to rely upon and produce or object to evidence, witnesses, facts, writings, or documents that are identified either herein or in any later supplements or amendments. By responding and objecting below, the Commission does not intend to—and does not—waive any applicable privilege, protection, or right that may prevent the disclosure of any such information.

DEFINITIONS USED IN THE RESPONSES AND OBJECTIONS

1. The "Investigation" means the Commission's Division of Enforcement staff's investigation captioned *In the Matter of Coinbase, Inc.* conducted under File Nos. HO-14315 and SF-04523.

2. The "Action" means the instant, above-captioned Commission civil enforcement action.

3. The "Commission's Initial Disclosures" means the Commission's Initial Disclosures Pursuant to Fed. R. Civ. P. 26(a)(1)(A), including Attachments A and B thereto, served on Defendants in the Action on May 3, 2024.

4. The "Commission's Investigative File" means those non-privileged documents identified in Section II and Attachment B of the Commission's Initial Disclosures obtained by the Commission's Division of Enforcement staff in the Investigation.

5. "Non-privileged" means not protected by any privilege or protection, including, without limitation, the attorney-client privilege, the work product doctrine, the deliberative process privilege, privileges and protections pursuant to Section 24(f) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78x, and the law enforcement privilege.

OBJECTIONS TO DEFINITIONS

The Commission asserts the following objections to Defendants' Definitions and incorporates such objections into each of the Specific Responses and Objections below.

1. The Commission objects to Defendants' Definition No. 6 ("Communication") to the extent it is inconsistent with and/or seeks impermissibly to expand the definition of the term "communication" set forth in Local Civil Rule 26.3(c)(1). The Commission will produce only those communications contemplated and encompassed by the defined term "communication" set forth in Local Civil Rule 26.3(c)(1).

2. The Commission objects to Defendants' Definition No. 11 ("Document" or "documents") to the extent it is inconsistent with and/or seeks impermissibly to expand the definition of the term "document" set forth in Local Civil Rule 26.3(c)(2). The Commission will produce only those documents contemplated and encompassed by the defined term "document" set forth in Local Civil Rule 26.3(c)(2).

3. The Commission objects to Defendants' Definition No. 16 ("Investigation") to the extent it means the "investigation(s) of individuals and entities" outside of the investigation conducted under File Nos. HO-14315 and SF-04523 (*see* defined term, "Investigation" above), because it is overbroad, unduly burdensome, oppressive, and not proportional to the needs of the case. Accordingly, and unless expressly stated otherwise, the Commission will search for and produce responsive documents only to the extent they are part of the Commission's Investigative File (*i.e.,* they were produced to the Commission's Division of Enforcement staff by third parties, constitute communications between Division of Enforcement staff and third parties, or were gathered by Division of Enforcement staff from publicly available sources, in connection with the Investigation), and they are non-privileged.

4. The Commission objects to Defendants' Definition No. 20 ("Person") to the extent it is inconsistent with and/or seeks impermissibly to expand the definition of the term "person" set forth in Local Civil Rule 26.3(c)(6). In responding and objecting to the Requests, the Commission will apply the definition of "person" set forth in Local Civil Rule 26.3(c)(6), and no other such definition.

5. The Commission objects to Defendants' Definition No. 21 ("Plaintiff," "SEC," "Commission," "you," or "your") to the extent it is inconsistent with and/or seeks impermissibly to expand the definition of the term "plaintiff" set forth in Local Civil Rule 26.3(c)(5), and to the extent that it purports to include within the scope of any Request Commission divisions and persons who did not conduct the Investigation or this Action. To the extent that any Request seeks documents

obtained or created by Commission divisions, offices, or employees of the Commission other than those who conducted the Investigation, the Commission objects to any such Request on the grounds that it seeks information that is not relevant to any party's claims or defenses in this Action, and because it is overbroad, unduly burdensome, and not proportional to the needs of the case. The Commission will produce only those non-privileged responsive documents within the possession, custody, or control of Division of Enforcement employees who conducted the Investigation.

6. The Commission objects to Defendants' Definition No. 27 ("concerning") to the extent it is inconsistent with and/or seeks impermissibly to expand the definition of the term "concerning" set forth in Local Civil Rule 26.3(c)(7). In responding and objecting to the Requests, the Commission will apply the definition of the term "concerning" set forth in Local Civil Rule 26.3(c)(7), and no other such definition.

OBJECTIONS TO INSTRUCTIONS

The Commission asserts the following objections to Defendants' Instructions and incorporates such objections into each of the Specific Responses and Objections below.

1. The Commission objects to Instruction No. 6, to the extent it is inconsistent with the Court's Order dated May 22, 2024, regarding the Stipulation and Proposed Fed. R. Evid. 502(d) Order (D.E. 127) ("May 22nd Order"), and to the extent it seeks to impose on the Commission a burden that is greater than that contemplated by or reflected in Local Civil Rule 26.2(c). The Commission further objects to this instruction because the Requests seek potentially millions of internal e-mails and other privileged and/or protected documents beyond the scope of the Investigation (most of which are irrelevant as set forth in the Specific Responses and Objections herein). Therefore, it would be especially burdensome, not proportional to the needs of the case, and oppressive to require the Commission to prepare a privilege log that identifies each such privileged document. Pursuant to the Court's May 22nd Order, the Commission will provide a privilege log that identifies by category the

documents and information being withheld and includes all available metadata fields specified in the May 22nd Order.

2. The Commission objects to Instruction No. 12, to the extent the Requests require the production of documents or communications "create[d]" after the date of the filing of the Complaint in this Action, on June 6, 2023.

SPECIFIC RESPONSES AND OBJECTIONS

The Commission adopts and incorporates by reference the foregoing Objections to Definitions and Instructions in response to each numbered request below. Upon request by Defendants, the Commission is willing to meet and confer regarding its responses and objections to Defendants' Requests.

REQUEST NO. 1

Your complete investigative file in connection with the Investigation, including but not limited to the following:

a. All subpoenas, voluntary document requests, and other requests to provide documents, testimony, or an interview, including Documents concerning the terms of any testimony or interview (including proffer agreements) of any Person or entity from whom you gathered information in connection with the Investigation;

b. All Documents received in response to any such requests, or otherwise obtained by you from third parties or third-party sources;

c. All transcripts, transcript exhibits, recorded testimony, verbatim notes, declarations, affidavits, witness interview notes, and memos and witness statements;

d. All Documents concerning any internal or external Communications concerning the Investigation. As examples, but without limitation, this category includes all correspondence (including email), cover letters, subpoenas, witness statements, declarations, affidavits, memoranda, summaries, or notes, and any drafts and versions of the foregoing, sent to, or received from, any witness, potential witness, entities, or their counsel. For the avoidance of doubt, this Request includes the formal order memorandum, the action memorandum, and emails and other communications between the staff of the Enforcement Division and SEC Commissioners or other SEC Divisions and their respective staff;

e. All Documents memorializing, evidencing, or concerning any Communications you had with any Government Entity and/or any other third party relating to the

Investigation, including but not limited to any written submissions or presentations made by third parties;

f. All Documents or Communications concerning a cooperation agreement between you and any Person or entity from whom you gathered information in connection with the Investigation; and

g. Your Contact List and Document Index for the Investigation, as contemplated in Section 3.2.9.4 of the SEC Enforcement Manual.

Plaintiff's Response to Request No. 1: The Commission objects to Request No. 1 to the extent it seeks documents that are privileged and protected by the attorney-client and deliberative process privileges, the work product doctrine, the law enforcement privilege, and Section 24(f) of the Exchange Act.

With respect to subpart (a) of Request No. 1, the Commission states it will produce the Commission's Investigative File, which includes non-privileged documents responsive to this request.

With respect to subpart (b) of Request No. 1, the Commission states it will produce the Commission's Investigative File, which includes non-privileged documents responsive to this request.

With respect to subpart (c) of Request No. 1, the Commission objects to Defendants' request for "witness interview notes" on grounds that such notes are protected by the work product doctrine. The Commission further responds to Defendants' request for "verbatim notes" by stating that it does not have any such documents in the Investigative File. With respect to the remainder of subpart (c) of this request, the Commission states it will produce the Commission's Investigative File, which includes non-privileged documents responsive to this request.

With respect to subpart (d) of Request No. 1, the Commission objects to Defendants' request for "notes" and "drafts" on grounds that such documents are protected by the attorney-client and deliberative process privileges, and the work product doctrine. The Commission further objects to Defendants' request for all "internal… Documents…[and] correspondence (including email)" and "the formal order memorandum, the action memorandum, and emails and other communications

between the staff of the Enforcement Division and SEC Commissioners or other SEC Divisions and their respective staff" because it calls for the production of documents that are protected by the attorney-client and deliberative process privileges, and the work product doctrine. With respect to the remainder of subpart (d) of this request, the Commission states it will produce the Commission's Investigative File, which includes non-privileged documents responsive to this request.

With respect to subpart (e) of Request No. 1, the Commission objects to Defendants' request for communications "with any Government Entity and/or any other third party relating to the Investigation" as that request seeks documents that are privileged and protected pursuant to Section 24(f) of the Exchange Act, and the law enforcement privilege. The Commission will not produce any privileged communications between Commission staff and any Government Entity, including the California Department of Financial Protection and Innovation ("CA DFPI"). The Commission states, however, that it will produce any non-privileged responsive documents produced by the CA DFPI to Division of Enforcement staff in connection with the Investigation, which are part of the Commission's Investigative File (as set forth in the Commission's Initial Disclosures). Accordingly, with respect to subpart (e) of this request, the Commission states it will produce the Commission's Investigative File, which includes non-privileged documents responsive to this request.

With respect to subpart (f) of Request No. 1, the Commission states that it does not have any such documents or communications in its possession, custody, or control.

Lastly, with respect to subpart (g) of Request No. 1, the Commission objects to Defendants' request for the Commission's "Contact List and Document Index for the Investigation, as contemplated in Section 3.2.9.4 of the SEC Enforcement Manual" on grounds that such documents are protected by the attorney-client privilege, and the work product doctrine. The Commission states that Attachment A to the Commission's Initial Disclosures identifies the contact information, if known, for any individuals likely to have discoverable information that the Commission may use to

support its claims against Defendants, and the Commission's Investigative File, which includes non-privileged documents responsive to this subpart, which the Commission will produce.

With respect to any responsive documents being withheld on the basis of privilege, the Commission will provide a privilege log describing those documents, consistent with the Court's May 22nd Order.

REQUEST NO. 2

All Documents and Communications concerning the Coinbase Platform, the Named Digital Assets, the Named Coinbase Services, or the subject matter of the Investigation or the Action, including all Communications with any Person or entity not party to this Action concerning the foregoing and any formal, informal, or voluntary requests by you for documents or information from any Person concerning the Coinbase Platform, the Named Digital Assets, the Named Coinbase Services, all Documents or Communications you received in response to such formal, informal, or voluntary requests, and all analyses (including but not limited to any regression and correlation, or event study analysis) whether done by you or on your behalf relating to the Coinbase Platform, any of the Named Digital Assets or Named Coinbase Services, the market performance of any of the Named Digital Assets relative to other Digital Assets or to public statements by Coinbase and/or the alleged issuers or promoters of such Named Digital Assets, and the size and value of sales of any of the Named Digital Assets over time.

Plaintiff's Response to Request No. 2: The Commission objects to Request No. 2 as unduly burdensome, overbroad, and oppressive.

The Commission further objects to Request No. 2, to the extent it seeks documents protected by the attorney-client and deliberative process privileges, the work product doctrine, and Section 24(f) of the Exchange Act. The Commission specifically objects to Defendants' request for: (i) "all analyses" done by or on behalf of the Commission, which is protected by the work product doctrine and also premature under and/or protected by Federal Rules 26(a)(2), 26(b)(3) and 26(b)(4); and (ii) "all Communications with any Person or entity not party to this Action" to the extent it calls for the production of communications between the Commission and other agencies protected by Section 24(f) of the Exchange Act.

Subject to and without waiving the foregoing objections, the Commission states it will produce the Commission's Investigative File, which includes non-privileged documents responsive to this

request. With respect to any responsive documents being withheld on the basis of privilege, the Commission will provide a privilege log describing those documents, consistent with the Court's May 22nd Order.

REQUEST NO. 3

Documents and/or Communications sufficient to establish when the SEC first learned of the Coinbase Platform, the Named Digital Assets, and the Named Coinbase Services, and when the SEC first learned that each of the Named Digital Assets had been listed or was planned to be listed on the Coinbase Platform, without limitation as to the applicable time period.

Plaintiff's Response to Request No. 3: The Commission objects to Request No. 3 as unduly burdensome, overbroad, and oppressive. The Commission also specifically objects to Defendants' use of the term "first learned," which is vague and undefined, and to the extent it seeks to place on the Commission a burden to precisely identify when it (an agency, not an individual) "first learned" of the enumerated subjects or any other burden not found in or greater than what is required under the Federal Rules, Local Civil Rules, or the Court's Individual Rules of Practice in Civil Cases ("Court's Individual Rules"). The Commission also specifically objects to the extent that certain communications responsive to this request—including communications between Defendants and non-Enforcement Division staff of the Commission—are already in the possession, custody, or control of, or equally available to, Defendants.

The Commission further objects to Request No. 3, to the extent it seeks documents that are not relevant nor proportional to the needs of the case. The Commission specifically objects because "when the SEC first learned of" the subjects enumerated in Request No. 3 is not relevant to any party's claims or defenses in this Action.

The Commission further objects to Request No. 3, to the extent it seeks documents protected by the attorney-client and deliberative process privileges, the work product doctrine, and Section 24(f) of the Exchange Act.

Subject to and without waiving the foregoing objections, the Commission states it will

produce the Commission's Investigative File, which includes non-privileged documents responsive to this request. With respect to any responsive documents being withheld on the basis of privilege, the Commission will provide a privilege log describing those documents, consistent with the Court's May 22nd Order.

REQUEST NO. 4

All Communications with, and Documents concerning Communications with, third parties (including any Government Entity) concerning the application of federal laws, regulations, or rules (including, but not limited to, the Securities Act of 1933 and the Securities Exchange Act of 1934) to the Coinbase Platform, the Named Digital Assets, or the Named Coinbase Services.

Plaintiff's Response to Request No. 4: The Commission objects to Request No. 4 as unduly burdensome, overbroad, and oppressive.

The Commission further objects to Request No. 4, to the extent it seeks documents that are not relevant nor proportional to the needs of the case.

The Commission further objects to Request No. 4 as it seeks documents protected by the attorney-client and deliberative process privileges, the work product doctrine, the law enforcement privilege, and Section 24(f) of the Exchange Act.

Subject to and without waiving the foregoing objections, the Commission states it will produce the Commission's Investigative File, which includes non-privileged documents responsive to this request. With respect to any responsive documents being withheld on the basis of privilege, the Commission will provide a privilege log describing those documents, consistent with the Court's May 22nd Order.

REQUEST NO. 5

All Communications with, and Documents concerning Communications with, third parties (including any Government Entity) concerning any investigation by a Government Entity concerning Coinbase, the Coinbase Platform, any of the Named Digital Assets, or any of the Named Coinbase Services.

Plaintiff's Response to Request No. 5: The Commission objects to Request No. 5 as unduly burdensome, overbroad, and oppressive.

The Commission also objects to Request No. 5, to the extent it seeks documents that are not relevant nor proportional to the needs of the case.

The Commission further objects to Request No. 5 as it seeks documents protected by the attorney-client and deliberative process privileges, the work product doctrine, the law enforcement privilege, and Section 24(f) of the Exchange Act.

Subject to and without waiving the foregoing objections, the Commission states it will produce the Commission's Investigative File, which includes non-privileged documents responsive to this request. With respect to any responsive documents being withheld on the basis of privilege, the Commission will provide a privilege log describing those documents, consistent with the Court's May 22nd Order.

REQUEST NO. 6

All Communications with, and Documents concerning Communications with, any Government Entity, including the CFTC, or with the Financial Industry Regulatory Authority (FINRA), relating to the allegations in the Complaint, the Investigation, Staking as a Service, Digital Assets, or Digital Asset Platforms, including but not limited to:

a. Any factual Documents prepared for or by the Commission, any Commissioner, and/or any Commission Staff or otherwise in the Commission Staff's custody or control, relating to the regulatory and/or enforcement authorities of the SEC and/or another Government Entity, including the scope of regulatory and/or enforcement authorities as between the SEC and another Government Entity or potential or proposed legislation relating to the regulatory and/or enforcement authorities of the SEC and/or another Government Entity; and

b. Any external Communications by the Commission, any Commissioner, and/or any Commission Staff, whether formal or informal, relating to the regulatory and/or

> enforcement authorities of the SEC and/or another Government Entity, including the scope of regulatory and/or enforcement authorities as between the SEC and another Government Entity or potential or proposed legislation relating to the regulatory and/or enforcement authorities of the SEC and/or another Government Entity.

Plaintiff's Response to Request No. 6: The Commission objects to Request No. 6 as unduly burdensome, overbroad, and oppressive.

The Commission further objects to Request No. 6 because it seeks documents that are not relevant nor proportional to the needs of the case.

The Commission further objects to Request No. 6 because it seeks documents protected by one or more privileges or protections, including the attorney-client and deliberative process privileges, the work product doctrine, the law enforcement privilege, and Section 24(f) of the Exchange Act.

Based on the foregoing objections, the Commission is not producing documents. With respect to any responsive documents being withheld on the basis of privilege, the Commission will provide a privilege log describing those documents, consistent with the Court's May 22nd Order.

REQUEST NO. 7

All Communications with, and Documents concerning Communications with, journalists or other employees or affiliates of news or media organizations concerning Coinbase, this Action, the Investigation, the Coinbase Platform, Digital Asset Platforms, any of the Named Digital Assets, or any of the Named Coinbase Services.

Plaintiff's Response to Request No. 7: The Commission objects to Request No. 7 as unduly burdensome, overbroad, and oppressive.

The Commission further objects to Request No. 7 because it seeks only documents that are not relevant nor proportional to the needs of the case.

The Commission further objects to Request No. 7, to the extent it seeks documents protected by the attorney-client and deliberative process privileges, and the work product doctrine.

Based on the Commission's relevance objection above, the Commission is not producing, and will not log, documents responsive to this request.

REQUEST NO. 8

All Communications with, and Documents concerning Communications with, any alleged developers of, alleged issuers of, or Persons otherwise affiliated with any of the Named Digital Assets or their associated blockchain networks, including any Documents or information provided to you by any alleged developers of, alleged issuers of, or Persons otherwise affiliated with any of the Named Digital Assets, their affiliated blockchain networks, or their counsel.

Plaintiff's Response to Request No. 8: The Commission objects to Request No. 8 as unduly burdensome, overbroad, and oppressive.

The Commission further objects to Request No. 8, to the extent it seeks documents protected by the attorney-client and deliberative process privileges and the work product doctrine.

Subject to and without waiving the foregoing objections, the Commission states it will produce the Commission's Investigative File, which includes non-privileged documents responsive to this request. With respect to any responsive documents being withheld on the basis of privilege, the Commission will provide a privilege log describing those documents, consistent with the Court's May 22nd Order.

REQUEST NO. 9

All Documents and Communications concerning any discussions, instructions, advice, inquiries, or other Communications between the SEC and any Person concerning that Person's actual, planned, or potential business or other relationship with Coinbase.

Plaintiff's Response to Request No. 9: The Commission objects to Request No. 9 as unduly burdensome, overbroad, and oppressive.

The Commission further objects to Request No. 9 because the phrase "actual, planned, or potential business or other relationship with Coinbase" is vague and undefined.

The Commission further objects to Request No. 9 because it seeks only documents that are not relevant nor proportional to the needs of the case.

The Commission further objects to Request No. 9, to the extent it seeks documents protected by the attorney-client and deliberative process privileges, the work product doctrine, and

Section 24(f) of the Exchange Act.

Based on the Commission's relevance objection above, the Commission is not producing, and will not log, documents responsive to this request.

REQUEST NO. 10

Without limitation as to time period, all Communications with, and Documents concerning Communications with: Prometheum, Inc., Martin Kaplan, Aaron Kaplan, or Benjamin Kaplan; Securitize, Inc.; Securitize LLC; or Securitize Markets, LLC.

Plaintiff's Response to Request No. 10: The Commission objects to Request No. 10 as unduly burdensome, overbroad, and oppressive.

The Commission further objects to Request No. 10 because it seeks only documents that are not relevant nor proportional to the needs of the case.

The Commission further objects to Request No. 10, to the extent it seeks documents protected by the attorney-client and deliberative process privileges, the work product doctrine, and Section 24(f) of the Exchange Act.

Based on the Commission's relevance objection above, the Commission is not producing, and will not log, documents responsive to this request.

REQUEST NO. 11

All Communications with, and Documents concerning Communications with, IEX Group, Inc. or Investors' Exchange LLC concerning Coinbase, Digital Assets, or Digital Asset Platforms.

Plaintiff's Response to Request No. 11: The Commission objects to Request No. 11 as unduly burdensome, overbroad, and oppressive.

The Commission further objects to Request No. 11 because it seeks only documents that are not relevant nor proportional to the needs of the case.

The Commission further objects to Request No. 11, to the extent it seeks documents protected by the attorney-client and deliberative process privileges, the work product doctrine, and Section 24(f) of the Exchange Act.

Based on the Commission's relevance objection above, the Commission is not producing, and will not log, documents responsive to this request.

REQUEST NO. 12

Without limitation as to time period, all Communications with, and Documents concerning Communications with, any Person concerning: (i) any actual, planned, or potential registration by that Person as an exchange, broker, dealer, clearing agency, alternative trading system, or custodian that would or could facilitate the offer, sale, or custody of Digital Assets or any product or service relating to Digital Assets, including but not limited to the requirements and process for or viability of such registration; or (ii) the registration with the SEC of any exchange- traded product that holds or references Digital Assets. For the purposes of this Request, "Person" includes but is not limited to BlackRock, Inc., Valkyrie Investments Inc., Valkyrie Digital Assets LLC, and Valkyrie Funds LLC.

Plaintiff's Response to Request No. 12: The Commission objects to Request No. 12 as unduly burdensome, overbroad, and oppressive.

The Commission further objects to Request No. 12 because it seeks only documents not relevant nor proportional to the needs of the case.

The Commission further objects to Request No. 12, to the extent it seeks documents protected by the attorney-client and deliberative process privileges, the work product doctrine, and Section 24(f) of the Exchange Act.

Based on the foregoing objections, the Commission is not producing documents.

REQUEST NO. 13

All Documents and Communications concerning (i) the June 14, 2018 speech by former SEC Director of the Division of Corporation Finance William Hinman titled "Digital Asset Transactions: When Howey Met Gary (Plastic)" ("Hinman Speech"), (ii) FinHub's April 2019 "Framework for 'Investment Contract' Analysis of Digital Assets," and (iii) *Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO*, Exchange Act Release No. 81207 (July 25, 2017), including but not limited to all Communications with any blockchain network or representative thereof and all Documents and Communications, including internal Communications, analyses, and other materials, that were prepared, reviewed, or relied upon by any current or former SEC Commissioner, Division Director, or Staff member in reaching the conclusions and observations reflected in these statements, including drafts of the statements and analyses prepared or commented upon by SEC Staff.

Plaintiff's Response to Request No. 13: The Commission objects to Request No. 13 as unduly burdensome, overbroad, and oppressive. The Commission also specifically objects to the

extent that the Hinman Speech, FinHub Framework, and DAO Report are all public and thus available to Defendants.

The Commission further objects to Request No. 13 because it seeks only documents that are not relevant nor proportional to the needs of the case.

The Commission further objects to Request No. 13, to the extent it seeks documents protected by the attorney-client and deliberative process privileges, the work product doctrine, and Section 24(f) of the Exchange Act. The Commission specifically objects because "internal Commission communications, analyses, and other materials," "drafts," additional "analyses prepared or commented upon by SEC Staff" constitute documents protected by the attorney-client and deliberative process privileges, and the work product doctrine.

Based on the Commission's relevance objection above, the Commission is not producing, and will not log, documents responsive to this request.

REQUEST NO. 14

All Documents and Communications concerning any public statements by the Commission or any SEC Division, Commissioner, or Staff member concerning the Named Digital Assets or Digital Asset Platforms, including but not limited to any internal or external Communications concerning such public statements and any analyses or other materials that were prepared or relied upon in reaching the conclusions and observations reflected in such public statements, including all Documents and Communications reflecting the Persons involved in such Communications or analyses.

Plaintiff's Response to Request No. 14: The Commission objects to Request No. 14 as unduly burdensome, overbroad, and oppressive. The Commission also objects on the basis that the "public statements" themselves are all public and thus available to Defendants.

The Commission further objects to Request No. 14 because it seeks only documents that are not relevant nor proportional to the needs of the case.

The Commission further objects to Request No. 14, to the extent it seeks documents protected by the attorney-client and deliberative process privileges, and the work product doctrine.

The Commission specifically objects because "internal … Communications," "any analyses," and certain "materials that were prepared or relied upon" by the Commission constitute documents protected by the attorney-client and deliberative process privileges, and the work product doctrine.

Based on the Commission's relevance objection above, the Commission is not producing, and will not log, documents responsive to this request.

REQUEST NO. 15

All Documents and Communications concerning whether Digital Assets or transactions in Digital Assets are "investment contract[s]" within the meaning of the Securities Act of 1933 or the Securities Exchange Act of 1934, including Documents and Communications concerning the application of *SEC* v. *W.J. Howey Co.*, 328 U.S. 293 (1946), to Digital Assets or transactions in Digital Assets.

Plaintiff's Response to Request No. 15: The Commission objects to Request No. 15 as unduly burdensome, overbroad, and oppressive.

The Commission further objects to Request No. 15, to the extent it seeks documents that are not relevant nor proportional to the needs of the case.

The Commission further objects to Request No. 15, to the extent it seeks documents protected by the attorney-client and deliberative process privileges, the work product doctrine, and Section 24(f) of the Exchange Act.

Subject to and without waiving the foregoing objections, the Commission states it will produce the Commission's Investigative File, which includes non-privileged documents responsive to this request. With respect to any responsive documents being withheld on the basis of privilege, the Commission will provide a privilege log describing those documents, consistent with the Court's May 22nd Order.

REQUEST NO. 16

All Documents and Communications concerning (i) the role of a Digital Asset's ecosystem in the application of the federal securities laws to that asset, including but not limited to determining whether transactions in an asset constitute transactions in investment contracts or other securities; or (ii) the ecosystems of the Named Digital Assets, including but not limited to the components of such ecosystems, the identities of the alleged developers, issuers, and promoters affiliated with such ecosystems, and any decentralized applications or business platforms related to such ecosystems.

Plaintiff's Response to Request No. 16: The Commission objects to Request No. 16 as unduly burdensome, overbroad, and oppressive.

The Commission further objects to Request No. 16, to the extent it seeks documents protected by the attorney-client and deliberative process privileges, and the work product doctrine.

Subject to and without waiving the foregoing objections, the Commission states it will produce the Commission's Investigative File, which includes non-privileged documents responsive to this request. With respect to any responsive documents being withheld on the basis of privilege, the Commission will provide a privilege log describing those documents, consistent with the Court's May 22nd Order.

REQUEST NO. 17

All Documents and Communications relating to your assertion during Oral Argument that when someone "purchases tokens like [the Named Digital Assets], like these 13 examples . . . they are investing into the network behind it"—that is, "the ecosystem." *See* Jan. 17, 2024 Hr'g Tr. at 21:20-22:5; *see also id.* at 57:17-21.

Plaintiff's Response to Request No. 17: The Commission objects to Request No. 17 as unduly burdensome, overbroad, and oppressive.

The Commission further objects to Request No. 17 to the extent it selectively quotes from the cited transcript and does not cite nor provide the full answer or context for, and misconstrues, the Commission's position stated during the relevant hearing on January 17, 2024.

The Commission further objects to Request No. 17, to the extent it seeks documents protected by the attorney-client and deliberative process privileges, and the work product doctrine.

Subject to and without waiving the foregoing objections, the Commission states it will produce the Commission's Investigative File, which includes non-privileged documents responsive to this request. With respect to any responsive documents being withheld on the basis of privilege, the Commission will provide a privilege log describing those documents, consistent with the Court's May 22nd Order.

REQUEST NO. 18

All Documents and Communications relating to (i) Bitcoin's ecosystem; or (ii) your assertion during Oral Argument that "there's no ecosystem behind" Bitcoin. *See* Jan. 17, 2024 Hr'g Tr. at 30:7-15.

Plaintiff's Response to Request No. 18: The Commission objects to Request No. 18 as unduly burdensome, overbroad, and oppressive.

The Commission further objects to Request No. 18 because it seeks only documents that are not relevant nor proportional to the needs of the case.

The Commission further objects to Request No. 18, to the extent it seeks documents protected by the attorney-client and deliberative process privileges, and the work product doctrine.

Based on the Commission's relevance objection above, the Commission is not producing, and will not log, documents responsive to this request.

REQUEST NO. 19

All Documents and Communications concerning the size, value, growth, or importance of the Digital Asset industry or Digital Asset Platforms.

Plaintiff's Response to Request No. 19: The Commission objects to Request No. 19 as unduly burdensome, overbroad, and oppressive.

The Commission further objects to Request No. 19 because the phrase "the size, value, growth, or importance of the Digital Asset industry or Digital Asset Platforms" is vague and undefined.

The Commission further objects to Request No. 19, to the extent it seeks documents that

are not relevant nor proportional to the needs of the case. The Commission specifically objects to the extent this request seeks documents concerning Defendants' "major questions doctrine" defense (*see* Defendants' Answer, D.E. 22 ("Answer"), at 174, Third Defense), which the Court has already rejected and thus is not relevant. *See* Opinion and Order on Defendants' Rule 12(c) Motion for Judgment on the Pleadings, D.E. 105 ("12(c) Order"), at 33 ("The Court finds that the instant enforcement action does not implicate the major questions doctrine.").

The Commission further objects to Request No. 19, to the extent it seeks documents protected by the attorney-client and deliberative process privileges, the work product doctrine, and Section 24(f) of the Exchange Act.

Subject to and without waiving the foregoing objections, the Commission states it will produce the Commission's Investigative File, which includes non-privileged documents responsive to this request. With respect to any responsive documents being withheld on the basis of privilege, the Commission will provide a privilege log describing those documents, consistent with the Court's May 22nd Order.

REQUEST NO. 20

All Documents and Communications relating to all risks of loss that you contend are relevant to whether Coinbase's Staking Services involves the offer and sale of investment contracts.

Plaintiff's Response to Request No. 20: The Commission objects to Request No. 20, to the extent it seeks documents protected by the attorney-client and deliberative process privileges, the work product doctrine, and Section 24(f) of the Exchange Act.

Subject to and without waiving the foregoing objections, the Commission states it will produce the Commission's Investigative File, which includes non-privileged documents responsive to this request. With respect to any responsive documents being withheld on the basis of privilege, the Commission will provide a privilege log describing those documents, consistent with the Court's May 22nd Order.

REQUEST NO. 21

All Documents and Communications relating to all managerial efforts that you contend Coinbase undertakes in providing the Staking Services.

Plaintiff's Response to Request No. 21: The Commission objects to Request No. 21, to the extent it seeks documents protected by the attorney-client and deliberative process privileges, the work product doctrine, and Section 24(f) of the Exchange Act.

Subject to and without waiving the foregoing objections, the Commission states it will produce the Commission's Investigative File, which includes non-privileged documents responsive to this request. With respect to any responsive documents being withheld on the basis of privilege, the Commission will provide a privilege log describing those documents, consistent with the Court's May 22nd Order.

REQUEST NO. 22

All Documents and Communications concerning potential or proposed legislation relating to the regulatory and/or enforcement authorities of the SEC and/or another Government Entity with respect to Digital Assets or Digital Asset Platforms.

Plaintiff's Response to Request No. 22: The Commission objects to Request No. 22 as unduly burdensome, overbroad, and oppressive. The Commission specifically objects because the referenced "proposed legislation" is public and thus available to Defendants. *See e.g.*, Answer at 20-21 & notes 67-71 (identifying, discussing, and providing website links to several proposed bills); *see also* Defs.' Mem. In Support of Motion for Judgment on the Pleadings (D.E. 36), at 23 & n.17 (same).

The Commission further objects to Request No. 22 because the term "regulatory and/or enforcement authorities" is vague and undefined.

The Commission further objects to Request No. 22, to the extent it seeks documents that are not relevant nor proportional to the needs of the case. The Commission specifically objects to the extent this request seeks documents not relevant to the application of the law *as it is*. *See* 12(c)

Order at 39 ("Here, the SEC is not announcing a new regulatory policy, but rather is simply engaging in a fact-intensive application of an existing standard—an application that Coinbase also conducted—to determine whether certain transactions involving crypto-assets meet the characteristics of an 'investment contract.'"). The Commission also specifically objects to the extent this request seeks documents concerning Defendants' "major questions doctrine" defense (*see* Defendants' Answer, D.E. 22 ("Answer"), at 174, Third Defense), which the Court has already rejected and thus is not relevant. *See* Opinion and Order on Defendants' Rule 12(c) Motion for Judgment on the Pleadings, D.E. 105 ("12(c) Order"), at 33 ("The Court finds that the instant enforcement action does not implicate the major questions doctrine.").

The Commission further objects to Request No. 22, to the extent it seeks documents protected by the attorney-client and deliberative process privileges, the law enforcement privilege, the work product doctrine, and Section 24(f) of the Exchange Act.

Based on the Commission's relevance objection above, the Commission is not producing, and will not log, documents responsive to this request.

REQUEST NO. 23

All Documents and Communications concerning any meeting or call involving one or more Commissioner concerning Coinbase, the Coinbase Platform, or any of the Named Digital Assets or Named Coinbase Services, including a list of the attendees of any such meeting or call.

Plaintiff's Response to Request No. 23: The Commission objects to Request No. 23 as unduly burdensome, overbroad, and oppressive. The Commission specifically objects to the extent this request seeks to impose on the Commission a burden to create "a list of the attendees of any such meeting or call" that does not otherwise exist, or any other burden not found in or greater than what is required under the Federal Rules, Local Civil Rules, or the Court's Individual Rules. The Commission also specifically objects to the extent that certain communications responsive to this request—*i.e.*, communications between Defendants and the Commission—are already in the

possession, custody, or control of, or equally available to, Defendants. *See, e.g.,* Appendix A to Defendants' Wells Submission ("Examples of Coinbase's Engagement with SEC" detailing the "Date" and "Topic(s) Covered" at meetings or in correspondence with various Commission divisions, offices, and Commissioners).

The Commission further objects to Request No. 23 because it seeks only documents that are not relevant nor proportional to the needs of the case.

The Commission further objects to Request No. 23, to the extent it seeks documents protected by the attorney-client and deliberative process privileges, and the work product doctrine.

Based on the Commission's relevance objection above, the Commission is not producing, and will not log, documents responsive to this request.

REQUEST NO. 24

All Documents and Communications from the SEC to Coinbase concerning (i) Coinbase listing any Digital Assets or the sale of any of the Named Coinbase Services; or (ii) Coinbase's operations.

Plaintiff's Response to Request No. 24: The Commission objects to Request No. 24 as unduly burdensome, overbroad, and oppressive. The Commission specifically objects to the extent that certain documents and communications responsive to this request—*i.e.*, communications between Defendants and the Commission (including attachments to any such written communications)—are already in the possession, custody, or control of, or equally available to, Defendants.

The Commission further objects to Request No. 24 because the term "Coinbase's operations" is vague and undefined.

The Commission further objects to Request No. 24, to the extent it seeks documents that are not relevant nor proportional to the needs of the case.

Subject to and without waiving the foregoing objections, the Commission states it will

produce the Commission's Investigative File, which includes non-privileged documents responsive to this request. With respect to any responsive documents being withheld on the basis of privilege, the Commission will provide a privilege log describing those documents, consistent with the Court's May 22nd Order.

REQUEST NO. 25

All Documents and Communications concerning any policy, guidance, clearance, or other permission or restriction given to current or former SEC Commissioners or employees concerning the purchase, use, ownership, or trading of Digital Assets or use of Digital Asset Platforms, including the purchase, use, ownership, or trading of any of the Named Digital Assets or Named Coinbase Services by such Person or their family members, including but not limited to general SEC policies and Communications with any Person.

Plaintiff's Response to Request No. 25: The Commission objects to Request No. 25 as unduly burdensome, overbroad, and oppressive. The Commission specifically objects to the extent this request seeks to impose an undue burden on the Commission to search for and produce all "Communications with any Person" concerning the overbroad subjects enumerated in the request.

The Commission further objects to Request No. 25 because the phrase "guidance, clearance, or other permission or restriction" is vague and undefined.

The Commission further objects to Request No. 25 because it seeks only documents that are not relevant nor proportional to the needs of the case.

The Commission further objects to Request No. 25, to the extent it seeks documents protected by the attorney-client and deliberative process privileges, and the work product doctrine.

The Commission further objects to Request No. 25, to the extent it seeks Commission employees' confidential personal financial information, where production of such information would result in the unnecessary infringement of their privacy rights and interests.

Subject to and without waiving the foregoing objections, the Commission states that 18 U.S.C. § 208, which is publicly available, bars an employee from working on a matter that will have a direct and predictable effect on the employee's financial interests, or those of the employee's spouse

or minor child. Commission employees are also subject to the Supplemental Standards of Ethical Conduct for Members and Employees of the Securities and Exchange Commission, publicly available and codified at 5 C.F.R. Part 4401. To the extent there are other ethics regulations that govern Commission employees' "purchase, use, ownership, or trading" of crypto assets or "use of Digital Asset Platforms," they are public and thus available to Defendants.

Based on the Commission's relevance objection above, the Commission is not producing, and will not log, documents responsive to this request.

REQUEST NO. 26

To the extent such Documents and Communications concern any Communications, analyses, or other materials regarding Coinbase, any of the Named Digital Assets, or any of the Named Coinbase Services, your investigative files in connection with any investigations by the Commission or Commission Staff relating to the following litigation matters and all Documents and Communications produced to or by the Commission in discovery in the following litigation matters:

a. *SEC* v. *Kik Interactive Inc.*, Case No. 19-cv-5244 (S.D.N.Y.);
b. *SEC* v. *Telegram Grp. Inc. and TON Issuer Inc.*, Case No. 19-cv-9439 (S.D.N.Y.);
c. *SEC* v. *Ripple Labs, Inc. et al.*, Case No. 20-cv-10832 (S.D.N.Y.);
d. *SEC* v. *LBRY, Inc.*, Case No. 21-cv-260 (D.N.H.); *SEC* v. *Wahi et al.*, Case No. 2:22-cv-1009 (W.D. Wash.);
e. *SEC* v. *Binance Holdings Ltd. et al.*, Case No. 23-cv-1599 (D.D.C.);
f. *SEC* v. *Bittrex, Inc. et al.*, Case No. 23-cv-580 (W.D. Wash.);
g. *SEC* v. *Genesis Global Capital, LLC and Gemini Tr. Co., LLC*, Case No. 23-cv-287 (S.D.N.Y.);
h. *SEC* v. *Terraform Labs PTE Ltd. and Kwon*, Case No. 23-cv-1346 (S.D.N.Y.);
i. *SEC* v. *Payward, Inc. and Payward Ventures, Inc.*, Case No. 23-cv-6003 (N.D. Cal.); and
j. *SEC* v. *Payward Ventures, Inc. (D/B/A Kraken) and Payward Trading, Ltd. (D/B/A Kraken)*, Case No. 23-cv-588 (N.D. Cal.).

Plaintiff's Response to Request No. 26: The Commission objects to Request No. 26 because it is unduly burdensome, overbroad, and oppressive. The Commission specifically objects to the extent certain responsive documents were publicly filed on the dockets for each of the enumerated cases and thus are available to Defendants.

The Commission further objects to Request No. 26 because it seeks only documents that

are not relevant nor proportional to the needs of the case.

The Commission further objects to Request No. 26, to the extent it seeks documents protected by the attorney-client and deliberative process privileges, the work product doctrine, and Section 24(f) of the Exchange Act. The Commission specifically objects because the request calls for the production of internal and inter-agency "Communications," "analyses," and "other materials" constituting documents protected by the attorney-client and deliberative process privileges, the work product doctrine, and Section 24(f) of the Exchange Act.

Based on the Commission's relevance objection above, the Commission is not producing, and will not log, documents responsive to this request.

REQUEST NO. 27

All Documents and Communications concerning Coinbase's direct public offering or registration statement on Form S-1 (including any drafts of such registration statement), including but not limited to Documents and Communications concerning the application or potential application of the federal securities laws to Coinbase's business or operations.

Plaintiff's Response to Request No. 27: The Commission objects to Request No. 27 as unduly burdensome, overbroad, and oppressive. The Commission specifically objects to the extent certain documents responsive to this request—*i.e.*, the Form S-1 and any drafts thereof or attachments thereto—are public and thus available to Defendants. The Commission also specifically objects to the extent certain documents responsive to this request—*i.e.*, communications between Defendants and the Commission, or documents produced by Defendants to the Commission—are in the possession, custody, or control of, or equally available to, Defendants.

The Commission further objects to Request No. 27 because it seeks only documents that are not relevant nor proportional to the needs of the case and/or for which the burden or expense of the proposed discovery outweighs its likely benefit under Federal Rule 26(b)(1). The Commission specifically objects because documents concerning Coinbase Global., Inc.'s registration statement on Form S-1 (declared effective on April 1, 2021) ("the Form S-1") are not relevant to any claim or

defense in this Action, *see* 15 U.S.C. §§ 77w, 78z. Indeed, the Form S-1 itself (and subsequent SEC filings by Coinbase) disclosed the risks that Coinbase could be found to be engaging in unregistered securities intermediary activity notwithstanding the Commission having declared the Form S-1 effective. (D.E. 1, ¶ 112).

The Commission further objects to Request No. 27, to the extent it seeks documents protected by the attorney-client and deliberative process privileges, and the work product doctrine.

Based on the Commission's relevance objection above, the Commission is not producing, and will not log, documents responsive to this request.

REQUEST NO. 28

All Documents and Communications concerning SEC Chair Gary Gensler's public remarks about Digital Assets, Digital Asset Platforms, and Staking as a Service, without limitation as to the applicable time period, including but not limited to:

a. Chair Gensler's May 6, 2021 testimony before the United States House Committee on Financial Services;

b. Chair Gensler's May 7, 2021 appearance on CNBC;

c. Chair Gensler's May 26, 2021 testimony before the United States House Subcommittee on Financial Services and General Government;

d. Chair Gensler's August 3, 2021 remarks before the Aspen Security Forum;

e. Chair Gensler's September 21, 2021 interview with the *Washington Post*;

f. Chair Gensler's October 5, 2021 testimony before the United States House Committee on Financial Services;

g. Chair Gensler's August 19, 2022 opinion piece published by the *Wall Street Journal*, titled "The SEC Treats Crypto Like the Rest of the Capital Markets";

h. Chair Gensler's December 7, 2022 interview with Yahoo! Finance;

i. Chair Gensler's interview with Ankush Khardori, as reported in *Intelligencer's* February 23, 2023 article, "Can Gary Gensler Survive Crypto Winter? D.C.'s Top Financial Cop on Bankman-Fried Blowback";

j. Chair Gensler's interview with CNBC's *Squawk Box*, as reported in CNBC's February 10, 2023 article, "SEC's Gary Gensler on Kraken Staking Settlement: Other Crypto Platforms Should take Note of This";

k. Chair Gensler's March 29, 2023 testimony before the United States House Appropriations Subcommittee on Financial Services and General Government;

l. Chair Gensler's statements regarding Digital Assets during "Office Hours with Gary

Gensler" including but not limited to the episodes from August 16, 2021, July 28, 2022, August 4, 2022, October 3, 2022, February 9, 2023, and April 27, 2023;

m. Chair Gensler's April 18, 2023 testimony before the United States House Committee on Financial Services;

n. Chair Gensler's interview with CNBC's *Squawk Box*, as reported in CNBC's June 6, 2023 article, "SEC Chair Gensler doubts the need for more digital currency";

o. Chair Gensler's interview with the *Wall Street Journal*, as reported in the June 8, 2023 article, "SEC's Gary Gensler Had Crypto in His Sights for Years. Now He's Suing Binance and Coinbase.";

p. Chair Gensler's June 8, 2023 remarks before the Piper Sandler Global Exchange & Fintech Conference;

q. Chair Gensler's interview with the *Wall Street Journal*, as broadcast in the June 14, 2023 podcast episode, "SEC Chair Gary Gensler on His Crypto Crackdown";

r. Chair Gensler's September 12, 2023 testimony before the United States Senate Committee on Banking, Housing, and Urban Affairs;

s. Chair Gensler's September 27, 2023 testimony before the United States House Committee on Financial Services; and

t. Chair Gensler's statements concerning Digital Assets or Digital Asset Platforms made prior to his tenure as SEC Chair.

Plaintiff's Response to Request No. 28: The Commission objects to Request No. 28 because it is unduly burdensome, overbroad, and oppressive. The Commission specifically objects to the extent this request seeks documents concerning *all* crypto assets, platforms, and staking generally, not only those at issue in this Action. The Commission also specifically objects to the extent the enumerated remarks themselves are public and thus available to Defendants.

The Commission further objects to Request No. 28 because it seeks only documents that are not relevant nor proportional to the needs of the case.

The Commission further objects to Request No. 28, to the extent it seeks documents protected by the attorney-client and deliberative process privileges, and the work product doctrine.

Based on the Commission's relevance objection above, the Commission is not producing, and will not log, documents responsive to this request.

REQUEST NO. 29

Without limitation as to time period, all Documents and Communications concerning the Petition for Rulemaking submitted by Coinbase on July 21, 2022, any comment letters submitted by Coinbase concerning its Petition for Rulemaking, or the Commission's Order denying Coinbase's Petition for Rulemaking issued on December 15, 2023, including any Communications with any third parties (including any Government Entity) concerning Coinbase's Petition for Rulemaking or the Commission's Order.

Plaintiff's Response to Request No. 29: The Commission objects to Request No. 29 as unduly burdensome, overbroad, and oppressive. The Commission specifically objects to the extent certain responsive documents were publicly filed on the Commission's website, and also publicly filed in Coinbase's action petitioning for a writ of mandamus to the Commission, *see In re Coinbase, Inc.*, Case 23-1779 (3d. Cir.), and thus are equally available to Defendants. The Commission also specifically objects to the extent certain responsive documents—*i.e.*, communications between Defendants and the Commission—are in the possession, custody, or control of, or equally available to, Defendants.

The Commission further objects to Request No. 29 because it seeks only documents that are not relevant nor proportional to the needs of the case. The Commission specifically objects because the requested documents and any other documents relating to Defendants' "Abuse of Discretion" defense (Answer, D.E. 22, at 174) or any other defense grounded in the Administrative Procedures Act ("APA"), are not relevant. *See* 12(c) Order at 39 ("[T]he APA also does not foreclose the SEC from bringing this enforcement action" reasoning, that "[w]hile it may be true that in cases where an agency purports to promulgate *new* regulatory authority, notice-and-comment rulemaking may offer a better, fairer, and more effective method of implementing agency policy than punitive enforcement actions, such is not the case here" where "the SEC is not announcing a new regulatory policy, but rather is simply engaging in a fact-intensive application of an existing standard[.]") (emphasis in original).

The Commission further objects to Request No. 29, to the extent it seeks documents protected by the attorney-client and deliberative process privileges, and the work product doctrine.

Based on the Commission's relevance objection above, the Commission is not producing, and will not log, documents responsive to this request.

REQUEST NO. 30

Without limitation as to time period, all Documents and Communications concerning the comment letters sent to Coinbase Global, Inc. by the Commission dated September 22, 2023 and April 17, 2024 regarding Coinbase Global, Inc.'s Form 10-K for the year ended December 31, 2023, Form 10-K for the year ended December 31, 2022, Form 10-Q for the period ended June 30, 2023, Form 8-K filed January 10, 2023, and Form 8-K filed May 4, 2023 (File No. 001-40289), and any subsequent correspondence relating thereto.

Plaintiff's Response to Request No. 30: The Commission objects to Request No. 30 as unduly burdensome, overbroad, and oppressive. The Commission specifically objects to the extent the enumerated comment letters are public and thus available to Defendants. The Commission also specifically objects to the extent certain responsive communications—*i.e.*, communications between Defendants and the Commission—are in the possession, custody, or control of, or equally available, to Defendants.

The Commission further objects to Request No. 30 because it seeks only documents that are not relevant nor proportional to the needs of the case.

The Commission further objects to Request No. 30, to the extent it seeks documents protected by the attorney-client and deliberative process privileges, and the work product doctrine.

Based on the Commission's relevance objection above, the Commission is not producing, and will not log, documents responsive to this request.

REQUEST NO. 31

All Documents and Communications that you intend to use or otherwise rely upon for any purpose in this Action, including: (i) all Documents and Communications identified, quoted, or referenced in the Complaint, indicating the paragraph(s) of the Complaint to which each Document and Communication relates; and (ii) all Documents and Communications that were created, reviewed, considered, or relied upon by you in preparing the Complaint, including, without limitation, any computations or analyses prepared by you underlying any assertions in the Complaint.

Plaintiff's Response to Request No. 31: The Commission objects to Request No. 31 as

unduly burdensome, overbroad, and oppressive. The Commission specifically objects to the extent this request seeks to impose on the Commission any undue burden to "indicate" the "paragraph(s) of the Complaint to which each [requested] Document and Communication relates" or any other burden not found in or greater than what is required under the Federal Rules, Local Civil Rules, and/or the Court's Individual Rules.

The Commission further objects to Request No. 31 to the extent it seeks documents protected by the attorney-client and deliberative process privileges, and the work product doctrine. The Commission specifically objects because documents "created, reviewed, considered, or relied upon" by the Commission, "computations or analyses", and internal Commission communications are all documents protected by the attorney-client and deliberative process privileges and the work product doctrine.

The Commission further objects to Request No. 31 to the extent it calls for production of any exhibits the Commission intends to offer at any trial in this Action, as such request is premature and contrary to the requirements of Federal Rule 26. The Commission will make appropriate trial-exhibit and other pretrial disclosures as required by the Federal Rules and the Court's Individual Rules, and pursuant to Section 15 of the Court's Case Management Plan and Scheduling Order (D.E. 116).

Subject to and without waiving the foregoing objections, the Commission states it will produce the Commission's Investigative File, which includes non-privileged documents responsive to this request. With respect to any responsive documents being withheld on the basis of privilege, the Commission will provide a privilege log describing those documents, consistent with the Court's May 22nd Order.

REQUEST NO. 32

All Documents and Communications relating to any Person that you have retained or intend to retain as an expert witness to testify or provide an affidavit or report in this Action, including: (i) a curriculum vitae for the expert; (ii) any Documents or Communications relied on, referred to, or consulted by the expert in formulating any opinions the expert intends to offer in any affidavit, report, or testimony in this Action; (iii) any Documents or Communications created by the expert related to this Action; (iv) all engagement letters or agreements concerning the expert's retention or employment in connection with this Action; (v) all articles, books, book chapters, speeches, and other presentations created by the expert during the past ten years that relate in any way to the opinions or conclusions reached by the expert in connection with the Action; (vi) all testimony given by and reports submitted by the expert as an expert witness during the past five years; and (vii) all Documents and Communications provided, prepared, received, reviewed, or made available to the expert or a representative of the expert.

Plaintiff's Response to Request No. 32: The Commission objects to Request No. 32 as unduly burdensome, overbroad, and oppressive.

The Commission further objects to Request No. 32 as premature and contrary to the requirements of Federal Rule 26. The Commission will make appropriate expert disclosures and productions as required by the Federal Rules and pursuant to Section 8(g) of the Court's Case Management and Scheduling Order (D.E. 116).

REQUEST NO. 33

All Documents and Communications produced by any third parties in connection with this Action (through subpoena, agreement, or otherwise).

Plaintiff's Response to Request No. 33: The Commission objects to Request No. 33 as premature, as the Commission has served, but not yet received documents in response to, Federal Rule 45 subpoenas for documents.

Subject to and without waiving the foregoing objections, the Commission states that it will produce any relevant non-privileged documents produced by any third parties, in response to subpoenas or otherwise, consistent with the Court's May 22nd Order.

REQUEST NO. 34

(a) All Documents referenced in Plaintiff's initial disclosures, and (b) all Documents and Communications relating to any Person listed as an individual or an entity likely to have discoverable information in Plaintiff's initial disclosures and that also relate to any issue in this Action.

Plaintiff's Response to Request No. 34: The Commission objects to Request No. 34 as unduly burdensome, overbroad, and oppressive.

The Commission further objects to Request No. 34 to the extent it seeks documents protected by the attorney-client and deliberative process privileges, the work product doctrine, and Section 24(f) of the Exchange Act.

Subject to and without waiving the foregoing objections, the Commission states it will produce the Commission's Investigative File, which includes non-privileged documents responsive to this request. With respect to any responsive documents being withheld on the basis of privilege, the Commission will provide a privilege log describing those documents, consistent with the Court's May 22nd Order.

Dated: May 23, 2024
Washington, D.C.

s/ Nicholas C. Margida

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CERTIFICATE OF SERVICE

I certify that on May 23, 2024, I caused the foregoing Plaintiff's Responses and Objections to Defendants' First Request for Production of Documents to be served by electronic mail on Defendants' counsel at the following addresses:

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ALICIA C. McCARTHY
JUSTIN R. ORR
NEIL M. SNYDER
JEFFREY A. WATIKER

MARTIN LIPTON
HERBERT M. WACHTELL
EDWARD D. HERLIHY
DANIEL A. NEFF
STEVEN A. ROSENBLUM
JOHN F. SAVARESE
SCOTT K. CHARLES
JODI J. SCHWARTZ
ADAM O. EMMERICH
RALPH M. LEVENE
RICHARD G. MASON
ROBIN PANOVKA
DAVID A. KATZ
ILENE KNABLE GOTTS
TREVOR S. NORWITZ
ANDREW J. NUSSBAUM
RACHELLE SILVERBERG
STEVEN A. COHEN
DEBORAH L. PAUL
DAVID C. KARP
RICHARD K. KIM
JOSHUA R. CAMMAKER
MARK GORDON
JEANNEMARIE O'BRIEN
WAYNE M. CARLIN
STEPHEN R. DiPRIMA
NICHOLAS G. DEMMO
IGOR KIRMAN
JONATHAN M. MOSES
T. EIKO STANGE
WILLIAM SAVITT
GREGORY E. OSTLING
DAVID B. ANDERS
ADAM J. SHAPIRO
NELSON O. FITTS
JOSHUA M. HOLMES
DAVID E. SHAPIRO
DAMIAN G. DIDDEN
IAN BOCZKO
MATTHEW M. GUEST
DAVID E. KAHAN
DAVID K. LAM
BENJAMIN M. ROTH
JOSHUA A. FELTMAN
ELAINE P. GOLIN
EMIL A. KLEINHAUS
KARESSA L. CAIN
RONALD C. CHEN
BRADLEY R. WILSON
GRAHAM W. MELI
GREGORY E. PESSIN
CARRIE M. REILLY
MARK F. VEBLEN
SARAH K. EDDY
VICTOR GOLDFELD
RANDALL W. JACKSON
BRANDON C. PRICE
KEVIN S. SCHWARTZ
MICHAEL S. BENN
ALISON Z. PREISS
TIJANA J. DVORNIC
JENNA E. LEVINE
RYAN A. McLEOD
ANITHA REDDY
JOHN L. ROBINSON
JOHN R. SOBOLEWSKI
STEVEN WINTER
EMILY D. JOHNSON
JACOB A. KLING
RAAJ S. NARAYAN
VIKTOR SAPEZHNIKOV
MICHAEL J. SCHOBEL
ELINA TETELBAUM
ERICA E. AHO
LAUREN M. KOFKE
ZACHARY S. PODOLSKY
RACHEL B. REISBERG
MARK A. STAGLIANO
CYNTHIA FERNANDEZ LUMERMANN
CHRISTINA C. MA
NOAH B. YAVITZ
BENJAMIN S. ARFA
NATHANIEL D. CULLERTON
ERIC M. FEINSTEIN
ADAM L. GOODMAN
STEVEN R. GREEN
MENG LU

June 25, 2024

BY EMAIL

Nicholas Margida
Senior Trial Counsel
U.S. Securities & Exchange Commission
Division of Enforcement
100 F Street, N.E.
Washington, DC 20549-5977

Re: *Securities and Exchange Commission* v. *Coinbase, Inc. and Coinbase Global, Inc.*, 23 Civ. 4738 (KPF)

Dear Nick:

We write to summarize our understanding of the SEC's positions concerning certain of Coinbase's document requests, as conveyed during calls between the parties on June 13, 17, and 20. Please let us know if any of the following is incorrect.

GENERAL ISSUES

We have identified two broad areas of disagreement between the parties, which apply to multiple requests:

Documents Held By Non-Investigatory Personnel

In its responses and objections, the SEC limited the definition of the "SEC" to the Division of Enforcement employees who conducted the Coinbase investigation. On our calls, the SEC confirmed that, other than with respect to select investigative files, it will not conduct any search outside of the files held by the Coinbase investigation staff, including any files outside of the Division of Enforcement, for information responsive to Coinbase's requests.

Coinbase disagreed with the SEC's position, noting that even divisions outside of Enforcement — for example, Trading and Markets or Corporation Finance — would likely have documents responsive to Coinbase's requests. Those sources should therefore be searched. The SEC acknowledged that Coinbase's requests called for information that might be in the possession, custody, or control of non-investigatory staff, but took the position that such documents were not relevant to the claims and defenses in the action. The SEC said that it was open to reconsidering its position in connection with specific requests but, after meeting and conferring on each of the Coinbase requests for production, the SEC has not changed its position.

The parties are at an impasse on this matter.

Documents Relevant to Coinbase's Defenses

During our calls, the SEC asserted that Coinbase's defenses, including as to fair notice and abuse of discretion, were "effectively dead" in light of Judge Failla's decision on Coinbase's motion for judgment on the pleadings. The SEC said that it is therefore unwilling to search for and produce any documents relevant to Coinbase's defenses unless and until Judge Failla confirms that the defenses are still in the case.

Coinbase disagreed, noting that the SEC opted not to move to strike the defenses and that Coinbase did not move for judgment on the pleadings on the basis of them — a point that the SEC had acknowledged in prior meet and confers. Following our June 13 discussion, the SEC specified that in order to confirm the SEC's position that it will not search for or produce documents requested in furtherance of Coinbase's defenses, the SEC required a discussion of each Coinbase request and the related defenses pursuant to which Coinbase seeks relevant document disclosure. Coinbase provided this information in two follow-up discussions, addressing each Coinbase request, but the SEC disagreed in each instance. The SEC's position continues to be that it will not search for documents relevant to Coinbase defenses, including any such documents in the select non-Coinbase investigative files that it has agreed to search.

The parties are at an impasse on this issue.

SPECIFIC RFPs

Investigative Files

The Coinbase Investigative File (RFP 1)

In response to RFP 1, the SEC has agreed to produce the investigative file for the investigation captioned *In the Matter of Coinbase, Inc.* conducted under File Nos. HO-14315 and SF-04523. We explained that any file for any investigation that formed the basis for the complaint should be produced, not just the *Coinbase* investigative file. In response, you represented that any information that the SEC relied on in preparing the complaint would be included in the *Coinbase* investigative file, [redacted], which you stated have also been produced. You also confirmed that the investigative file being produced includes all documents concerning the investigation and not just those that the SEC plans to rely on affirmatively to support its claims. Finally, you confirmed that all documents contained in the *Coinbase* investigative file would be produced or logged in accordance with the Court's Rule 502(d) order. Please let us know if any of the foregoing is incorrect.

SEC's Other Investigative Files (RFP 26)

The SEC's initial position was that it would not search any non-*Coinbase* investigative file for responsive information, including the files related to the matters listed in RFP 26. [redacted] The SEC did not dispute that the files might contain responsive information but contended that it would be too burdensome to search and review what it claimed would be potentially dozens of other investigative files. When we asked whether the SEC had undertaken any analysis to determine or quantify that burden, you stated that the SEC had not attempted to search any non-*Coinbase* files but that the number of other files that Coinbase had requested to be searched would be "inherently burdensome." In response, we noted that RFP 26 only sought information from ten investigative files and that it did not seem overly burdensome to determine which if any of those files contained responsive information. You agreed to look into the issue.

We understand from our most recent meet and confers that the SEC has now agreed to search for responsive documents in [redacted] and (ii) investigations related to the Bittrex, Kraken, and Binance exchanges. [redacted] The SEC also stated that, as to the non-*Coinbase* investigative files it is willing to search for responsive documents, the SEC will not log any responsive documents that it withholds on the basis of privilege. As we explained on the call, given that the SEC will be searching the investigative files to identify responsive information and to determine what if any of that information is privileged, preparing

the log required by the Court's Rule 502(d) order (on a categorical basis, supplemented by document metadata) does not present a substantial, additional burden — and again, it is required by the Court's order. Please let us know if the SEC will reconsider its position. Otherwise, we understand the parties to have reached an impasse on this issue.

We will reserve on the other investigations identified in RFP 26, except for the investigative files for *Wahi* and *Kraken* staking, as to which we reiterate our position that these files should be searched for responsive documents to be produced (or if withheld on a claim of privilege, then logged as required by the Court's order). Please let us know whether the SEC will reconsider its position at least as to those additional investigative files. Otherwise, we understand the parties to have reached an impasse on that issue.

Documents Concerning Coinbase and the Named Tokens and Services (RFPs 2, 3, 4, 5, 6, 15, 16, 17, 20, and 21)

The SEC does not dispute that RFPs 2, 3, 4, 5, 6, 15, 16, 17, 20, and 21 seek relevant information, but the SEC does not agree to search for and produce responsive information beyond that contained within the select investigative files discussed above. The SEC's position is that its internal views are not relevant to the claims and defenses in the action, and are in any event likely privileged, and that any relevant third-party communications, or internal communications reflecting such communications, would be too burdensome to identify. The SEC, however, has offered no information, such as "hit reports," to substantiate its claims of burden with respect to the search for the requested information.

Coinbase disagrees with the SEC's position and believes that the SEC should undertake a reasonable search of files likely to contain responsive information, including files outside the Enforcement Division.[1] Coinbase has communicated its willingness to work with the SEC on a reasonable search, including as to relevant custodians and search terms, and, as set forth below, proposes that the SEC undertake a preliminary search to furnish a "hit report" to enable the parties to better address the asserted burden of searching the files for responsive information. If the SEC does not agree to undertake the requested search, we will be at an impasse.

Communications with Issuers/Developers of the Named Tokens (RFP 8)

The SEC has taken the position that it will not search its files for communications with issuers or developers of the named tokens outside of the select investigative files that it has agreed to search. Coinbase's position is that such communications are plainly responsive and non-privileged. The SEC does not dispute that such communications may exist, and indeed productions in other litigation confirm that SEC personnel outside of the Division of

[1] While reserving our position as set forth in our Requests for Production and as stated in our meet and confers, for now Coinbase is willing to limit RFPs 15 and 16 to documents concerning the Coinbase Platform, the Named Tokens and Services, and whether market participants had fair notice of whether and how the securities laws would be applied to digital assets.

Enforcement had communications with token issuers that would be responsive. Ex. A (letter from counsel for Dash Core Group). We believe that the burden of identifying such communications should be modest and that such communications should be collected and produced. As set forth below, Coinbase proposes that the SEC undertake a preliminary search to furnish a "hit report" to enable the parties to better understand the asserted burden of searching the files for responsive information. If the SEC does not agree to undertake the requested search, we will be at an impasse.

Documents Concerning Public Statements by the SEC (RFPs 13, 14, and 28)

The SEC refuses to produce documents in response to RFPs 13, 14, and 28 — which seek information concerning public positions and statements by the SEC, Chair Gensler, and other SEC representatives relating to the application of the securities laws to digital assets — on the ground that the requests seek what the SEC characterizes as irrelevant information. As noted during our calls, we disagree and believe that the requests are particularly relevant to Coinbase's fair notice defense. The parties are at an impasse as to these requests.

Documents Concerning Coinbase's Form S-1 and Direct Public Offering (RFP 27)

The SEC will not produce documents in response to RFP 27, concerning Coinbase's direct public offering or registration statement on Form S-1, on the ground that the requests seek what the SEC characterizes as irrelevant information. As set forth in Coinbase's Answer and as detailed in our meet and confers, the SEC's detailed review of Coinbase's business and declaring effective Coinbase's registration statements under 15 U.S.C. § 77h(a) and 17 C.F.R. § 230.461(b) bears directly on Coinbase's fair notice defense. The parties are at an impasse as to this request.

Additional Requests Subject to Relevance Objection

The SEC objected to producing any documents in response to RFPs 7, 9, 10, 11, 12, 19, 23, 24, 29, and 30, on the ground that they seek what the SEC characterizes as irrelevant information. For the reasons discussed on our meet and confers, we disagree with the SEC's position and believe the requests are relevant to Coinbase's defenses, including its fair notice defense. It appears we are at an impasse as to these requests. For now, however, Coinbase is willing to reserve its position on these requests.

* * * * *

During our meet and confers, the SEC justified a number of its objections to Coinbase's requests on the grounds that searching for documents and information outside of certain investigative files maintained by the Division of Enforcement would be overly burdensome. The SEC, however, has not assessed with any data the scale of that purported burden. We therefore request that the SEC prepare hit reports based on an illustrative search of its files to better understand the volume of documents that might be subject to review in response to Coinbase's

requests. The proposed preliminary search is set forth at the Appendix hereto.[2] Please let us know by June 27 whether the SEC is willing to undertake this search or, at minimum, to meet and confer regarding appropriate preliminary search parameters to furnish such a hit report.

Respectfully,

Kevin S. Schwartz

[2] Coinbase reserves all rights with respect to any final search protocol to be negotiated between the parties.

Appendix – Proposed Search for Hit Report

Date Range: January 1, 2017 through June 6, 2023

Custodians: Jay Clayton, Rob Cohen, Caroline Crenshaw, Michael Gaw, Gary Gensler, Erik Gerding, William Hinman, David Hirsch, Jon Ingram, Renee Jones, Allison Herren Lee, Kristina Littman, Jaime Lizárraga, Hester Peirce, Brett Redfearn, Elad Roisman, Michael Seaman, Amy Starr, Valerie Szczepanik, Mark Uyeda, Mark Vilardo, and Haoxiang Zhu.

Search Terms (limited to emails with fewer than 50 addressees to avoid mass emails)

- Coinbase
- Solana
- SOL
- @solana.org
- @solana.com
- @solana.foundation
- Cardano
- ADA
- @cardanofoundation.org
- @iohk.io
- @emurgo.io
- Polygon
- MATIC
- @polygon.technology
- @protocol.ai
- Filecoin
- FIL
- @fil.org
- Sandbox
- SAND
- @sandbox.game
- Axie
- AXS
- @animocabrands.com
- @pixowl.com
- @axieinfinity.com

- @skymavis.com
- Chiliz
- CHZ
- @chiliz.com
- @mediarex.com
- “Dapper Labs”
- FLOW
- @dapperlabs.com
- @dfinity.org
- “Internet Computer”
- ICP
- Internetcomputer.org
- NEAR /s (protocol or token)
- @near.foundation
- @near.org
- Voyager
- VGX
- @investvoyager.com
- DASH
- @dash.org
- (crypto* or token or “digital asset”) and (“fair notice” or *certainty or confusion)
- (crypto* or token or “digital asset”) and (Howey or securit* or ecosystem)

EXHIBIT A

Exhibit 217

PAUL HASTINGS

CONFIDENTIAL TREATMENT REQUESTED
BY DASH CORE GROUP, INC.
UNDER 17 C.F.R. §200.83
DASH-001

October 31, 2018

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Office of Chief Counsel
Division of Markets and Trading
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Dash Virtual Currency

Dear Sir or Madam:

On October 4, 2018, representatives of our client Dash Core Group, Inc. ("DCG") and we met with members of the Staff of the Division of Corporation Finance and the Division of Markets and Trading to discuss our draft letter dated August 30, 2018 requesting no action relief (the "Draft Request") in respect of Dash, a virtual currency, on the basis outlined therein. At such meeting, the Staff requested that we provide a supplemental memorandum analyzing Dash within the rubric of the factors outlined by William Hinman, Director of the Division of Corporation Finance, in his speech titled "Digital Asset Transactions: When Howey Met Gary (Plastic)," dated June 14, 2018. This letter sets forth our analysis.

For ease of reference, each of the factors identified in Director Hinman's speech is reproduced below in bold text with our responses immediately following.

1. **Is there a person or group that has sponsored or promoted the creation and sale of the digital asset, the efforts of whom play a significant role in the development and maintenance of the asset and its potential increase in value?**

   The Dash network (the "Network") is decentralized and has been since inception. Dash and the Network initially were developed by a small group of individuals led by Evan Duffield, but these individuals' efforts were relatively quickly replaced by efforts of a much larger decentralized community of persons interested in promoting Dash as a superior virtual currency. DCG is not aware of any of the initial developers continuing to play a significant role in further development or maintenance of the Network.

   As explained in greater detail in the Draft Request, the Network consists of thousands of nodes that validate transactions which are processed by "miners." Certain nodes known as "masternodes" perform specialized functions on the Network, including processing InstantSend transactions (which allow users to receive confirmation of their transaction within seconds) and PrivateSend transactions (which provide enhanced privacy). In exchange for their contributions to the Network, miners and masternodes share "block rewards," which are sums of newly created Dash, and transaction fees. All Dash in existence has been created via the issuance of block rewards and Dash Treasury Funds (discussed below) after the Network was operational. The Network has never sold Dash.

SEC-SEC-E-0004765
HIGHLY CONFIDENTIAL
SEC-LIT-EPROD-001463104
RPLI_02172973

PAUL HASTINGS

CONFIDENTIAL TREATMENT REQUESTED
BY DASH CORE GROUP, INC.
UNDER 17 C.F.R. §200.83
DASH-002

In addition to performing specialized functions for the Network, masternodes also serve a governance function in the Network by voting on Network proposals. Each month, 10% of the amount of aggregate block rewards is allocated to "Dash Treasury Funds," which are used to fund projects and activities that serve the needs of the Network, including supporting further development of the Network and promoting the use of Dash. Anyone can submit a proposal for such a project for a fee of five Dash (Dash paid as proposal submission fees are destroyed). The decision to approve a specific proposal is determined by a vote of the masternode operators. Assuming there are sufficient Dash Treasury Funds to fund a particular proposal, if the number of votes in favor of such proposal exceeds the number of votes against a proposal by a margin of at least 10% of the total number of masternodes, the Network automatically creates and allocates the requested amount of Dash Treasury Funds contemplated by the proposal.[1]

Numerous organizations, groups and individuals, including DCG, regularly submit proposals for Dash Treasury Funds to fund their activities in support of the Network. DCG provides software development, marketing, advocacy and business development services to advance the interests of the Network. However, there are other organizations, groups and individuals who regularly submit proposals for and receive Dash Treasury Funds to provide these types of services to the Network. Masternode operators determine which proposals to fund.

2. **Has this person or group retained a stake or other interest in the digital asset such that it would be motivated to expend efforts to cause an increase in value in the digital asset? Would purchasers reasonably believe such efforts will be undertaken and may result in a return on their investment in the digital asset?**

As architected, there never was a "developers' fund" or other reserve of Dash that was allocated to the developers of the Network. Any Dash possessed by early developers of the Network was acquired through mining (in which case, their mining activities competed with those of other miners) or as Dash Treasury Funds or purchased on the secondary market.

Similarly, organizations, groups and individuals who "support" the Network today do so by processing transactions (and are rewarded with block rewards) or performing services to benefit the Network pursuant to proposals submitted to and approved by the masternode operators. For example, DCG submits proposals to cover its operating expenses, including compensation to employees, contractors and other service providers, rent and other overhead expenses. DCG spends nearly all of the Dash it receives on a monthly basis; any balance is maintained for working capital purposes (e.g., to pay operating expenses in months during which such expenses exceed the Dash Treasury Funds received by DCG).

Dash Treasury Funds can fund proposals that promote Dash or improve the functionality of the Network, which may lead to an increase in Dash's value due to demand and other market factors. However, there is no assurance that any proposal for Dash Treasury Funds will be approved or that parties who provide services to the Network will continue to do so.

[1] From time to time, proposals are submitted that seek input from the masternode operators regarding significant strategic decisions relating to the Network rather than requesting allocation of Dash Treasury Funds. The subject matter of past "decision proposals" has included increasing the transaction block size, changing the Dash logo, and reducing the proposal submission fee.

PAUL HASTINGS

CONFIDENTIAL TREATMENT REQUESTED
BY DASH CORE GROUP, INC.
UNDER 17 C.F.R. §200.83
DASH-003

3. **Has the promoter raised an amount of funds in excess of what may be needed to establish a functional network, and, if so, has it indicated how those funds may be used to support the value of the tokens or to increase the value of the enterprise? Does the promoter continue to expend funds from proceeds or operations to enhance the functionality and/or value of the system within which the tokens operate?**

   The Network did not conduct an "ICO" or any other form of token sale. No Dash were ever sold by the Network or any founder to fund development of the Network. All Dash in circulation were created after the Network became operational in January 2014 as a result of mining, in the form of block rewards and Dash Treasury Funds.

4. **Are purchasers "investing," that is seeking a return? In that regard, is the instrument marketed and sold to the general public instead of to potential users of the network for a price that reasonably correlates with the market value of the good or service in the network?**

   Dash generally is promoted as a superior form of virtual currency and not for its investment potential. When used in commercial transactions, Dash functions as a medium of exchange. Dash is accepted by over 3,900 merchants around the world.[2] It can be used to pay for food, clothing, utilities, mobile service, travel and many other goods and services.[3] Dash users completed around 979,000 transactions using Dash in the second quarter of 2018.[4]

   We note that, due to the decentralized nature of the Network, no particular person or entity controls the marketing of Dash. From time to time, the Network approves proposals submitted by third parties, including DCG, to promote the benefits of Dash. DCG has tended to focus on Dash's utility and unique features in its own marketing efforts and has discouraged other marketers of Dash from characterizing Dash as an investment opportunity or emphasizing the potential for profit.

   Dash can only be acquired through mining, operating a masternode, through an approved proposal for Dash Treasury Funds or in the secondary market. When acquired on the secondary market, the parties to the transaction determine the price at which Dash is sold.

5. **Does application of the Securities Act protections make sense? Is there a person or entity others are relying on that plays a key role in the profit-making of the enterprise such that disclosure of their activities and plans would be important to investors? Do informational asymmetries exist between the promoters and potential purchasers/investors in the digital asset?**

   Characterization of Dash as a "security" under the Securities Act makes no sense and would be a substantial impediment to Dash achieving widespread use as a virtual currency. In no way does a holder, in receiving Dash through mining or Dash Treasury Funds or in purchasing Dash in the secondary market, invest in any profit-making enterprise managed by any identified dedicated group of individuals or entities.

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[2] *See Welcome To Discover Dash Online Business Directory,* https://discoverdash.com (last visited Oct. 29, 2018).
[3] *Id.*
[4] *See Dash Transactions hist. chart*, BitInfoCharts, https://bitinfocharts.com/comparison/dash-transactions.html (last visited Oct. 30, 2018).

PAUL HASTINGS

CONFIDENTIAL TREATMENT REQUESTED
BY DASH CORE GROUP, INC.
UNDER 17 C.F.R. §200.83
DASH-004

The Network as the creator of Dash does not generate revenues or profits that are paid as financial return to holders of Dash. Moreover, there are no managers or promoters of Dash who solicit funds from purchasers or upon whose performance the value of Dash is dependent. As described in detail in the Draft Request, the Network relies on many third parties to perform functions that might typically be carried out by promoters or managers. In exchange for Dash paid from the Network (in the form of block rewards and Dash Treasury Funds), these third parties provide services that enhance the Network, such as transaction processing (provided by miners), Network security and functionality (supported by masternodes), and software development and marketing (provided by third parties like DCG). However, these services are funded only as a result of mining and only if proposals for such services are approved by the masternodes. Ultimately, the masternodes (of which there are currently approximately 4,900[5]) collectively choose how to allocate Dash Treasury Funds.

Information about Dash and the Network is publicly available to anyone with internet access. The Network's code can be viewed on github.com.[6] All proposals for Dash Treasury Funds and the results of voting on such proposals are publicly viewable.[7] Many of the organizations, groups and individuals who receive Dash Treasury Funds share periodic updates on their activities and the progress of specific projects funded by Dash Treasury Funds with the Dash community in public online forums.[8]

6. **Do persons or entities other than the promoter exercise governance rights or meaningful influence?**

Because there is no central authority or single or core group of promoters of Dash, governance and influence over Dash and the Network resides with users that contribute resources to the Network. Miners influence the Network in a similar fashion to Bitcoin, in which a critical mass of users must support a new Network version or feature for such version or feature to be implemented successfully. Masternodes participate in Network governance in the same way as miners and also by voting on proposals, thereby determining who receives Dash Treasury Funds from the Network.

7. **Is token creation commensurate with meeting the needs of users or, rather, with feeding speculation?**

All Dash in circulation were created after the Network became operational in January 2014, as a result of mining in the form of block rewards and Dash Treasury Funds. No Dash have ever been sold by the Network.

8. **Are independent actors setting the price or is the promoter supporting the secondary market for the asset or otherwise influencing trading?**

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[5] *Home*, Dash Central, https://www.dashcentral.org/ (last visited Oct. 30, 2018).
[6] *See dashpay/dash*, GitHub, https://github.com/dashpay/dash (last visited Oct. 30, 2018).
[7] *See Budget*, Dash Central, https://www.dashcentral.org/budget (last visited Oct. 30, 2018).
[8] *See Welcome to the Dash Forum*, https://www.dash.org/forum/ (last visited Oct. 30, 2018). For example, DCG holds quarterly webcasts to update the Dash community on progress of projects it has undertaken and provide transparency regarding its activities.

PAUL HASTINGS

CONFIDENTIAL TREATMENT REQUESTED BY DASH CORE GROUP, INC. UNDER 17 C.F.R. §200.83 DASH-005

The price of Dash is solely determined by buyers and sellers in the secondary market. DCG does not engage in trading Dash and simply sells a portion of the Dash it receives pursuant to approved proposals for Dash Treasury Funds when and as needed to support its ongoing operations.[9]

9. **Is it clear that the primary motivation for purchasing the digital asset is for personal use or consumption, as compared to investment? Have purchasers made representations as to their consumptive, as opposed to their investment, intent? Are the tokens available in increments that correlate with a consumptive versus investment intent?**

As noted above, users acquire Dash through mining, operating a masternode, through an approved proposal for Dash Treasury Funds or in the secondary market. Because users do not acquire Dash from the Network in a purchase transaction, they do not make representations to the Network regarding their intent. While it is impossible to know the subjective motivations of purchasers of Dash, it is evident from the adoption of Dash as an alternative form of payment that many users purchase Dash for personal use as a medium of exchange. Dash has become a leading cryptocurrency, accepted by over 3,900 merchants around the world and can be used to pay for a multitude of goods and services. Dash can be held and transferred in amounts as small as eight (8) decimal places, or 1/100,000,000th of one unit. At current prices, this is less than 1/5,000th of one U.S. cent.[10] Together with Dash's InstantSend feature, this makes Dash suitable for use in everyday transactions like buying a cup of coffee.

10. **Are the tokens distributed in ways to meet users' needs? For example, can the tokens be held or transferred only in amounts that correspond to a purchaser's expected use? Are there built-in incentives that compel using the tokens promptly on the network, such as having the tokens degrade in value over time, or can the tokens be held for extended periods for investment?**

As noted above, Dash can be held and transferred in amounts that make it suitable for everyday use and even micro-payments.

The value of Dash fluctuates over time with market supply and demand, but there is nothing inherent in the Dash protocol that incentivizes either its prompt or later use. Similar to Bitcoin or fiat currencies, Dash can and does act as a store of value, though the value remains volatile at its current scale.

The supply of Dash increases over time as new Dash are created through mining. The amount of Dash created annually has declined as a result of lower block rewards, and is expected to continue to do so.[11] The total amount of Dash that can be created is not expected to exceed 18.9 million.[12]

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[9] DCG endeavors to pay its vendors and contractors in Dash however, it has to exchange some of its Dash into fiat currency in order to pay those vendors and contractors who do not accept Dash.

[10] *See Dash*, https://coinmarketcap.com/currencies/dash/ (last visited Oct. 30, 2018).

[11] As explained in more detail in the Draft Request, block rewards fluctuate based on how much processing power is operating on the Network. Based on the level of processing power currently available to the Network, it is likely that the block reward will remain at its minimum going forward.

[12] The total amount of Dash that ultimately will be created depends on three variables: (i) the number of Dash created as block rewards; (ii) the number of Dash created and allocated each month as Dash Treasury Funds and (iii) decreases in Dash circulation resulting from the destruction of Dash paid as proposal submission fees. Because of these factors, it is highly unlikely that the total number of Dash in circulation will ever exceed 18.9 million.

PAUL
HASTINGS

CONFIDENTIAL TREATMENT REQUESTED
BY DASH CORE GROUP, INC.
UNDER 17 C.F.R. §200.83
DASH-006

11. Is the asset marketed and distributed to potential users or the general public?

Dash is created and distributed by the Network only in connection with mining, operation of a masternode and approved proposals for Dash Treasury Funds. Dash also may be acquired on the secondary market on digital currency exchanges or through direct transfers between users. Users who acquire Dash through mining, operating a masternode or as Dash Treasury Funds are likely potential users of the Network, as are users who acquire Dash directly from other users.

As noted above, no particular person or entity controls the marketing of the benefits of Dash. Dash is marketed by individual users as well as groups and organizations, some of whom are funded by approved Network proposals; consequently, marketing techniques, messages and the audiences for whom they are intended vary. Some parties who promote the use of Dash likely take the view that because Dash is a virtual currency useable by anyone with access to the internet, the potential user base of Dash extends to the general public at large.

12. Are the assets dispersed across a diverse user base or concentrated in the hands of a few that can exert influence over the application?

DCG is not aware of any individuals or entities with concentrated holdings of Dash sufficient to control the outcome of masternode voting or transaction processing on the Network.

While nobody can precisely determine concentration of ownership of Dash due to the fact that ownership of wallets is not known, all anecdotal evidence, such as voting behavior and wallet analysis[13], suggests that Dash is as diversely held as other similar virtual currencies. As of October 30, 2018, the top ten and 100 addresses holding the largest quantities of Dash held 5.36% and 13.99%, respectively, of total Dash in circulation.[14] By comparison, as of that same date, the top ten and 100 addresses holding the largest quantities of Bitcoin held 5.38% and 18.94%, respectively, of total Bitcoin in circulation.[15]

Similarly, based on information made available to DCG by dashcentral.org, a website that allows masternode operators to register their masternodes and obtain access free monitoring and voting tools, DCG believes there is little concentration of masternode ownership. According to such information, as of July 27, 2018, 472 masternode owners had proven ownership of 1,990 masternodes, or approximately 42% of all masternodes as of such date. The most masternodes owned by a single account was 197, which represents approximately 4% of all masternodes as of such date. This data set represents almost half of the masternode population, and DCG believes it offers valuable insight into masternode ownership distribution.

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[13] Analysis of masternode voting supports certain assumptions about the ownership of masternodes. For example, if a block of masternodes consistently votes the same way, it might suggest that they are owned by the same person. Timing of voting is also a potential indicator of common ownership; for example, if a block of masternodes consistently cast their votes at the same time, it might suggest that they are owned by the same person. There are various types of analyses that can help link individual addresses to a single wallet or owner. The most commonly used analysis, referred to as a "taint" analysis, makes the assumption that whenever a transaction involves two or more inputs, those addresses most likely belong to the same user.

[14] *Dash (DASH) price stats and information*, BitInfoCharts, https://bitinfocharts.com/dash/ (last visited Oct. 30, 2018).

[15] *Bitcoin (BTC) price stats and information*, BitInfoCharts, https://bitinfocharts.com/bitcoin/ (last visited Oct. 30, 2018).

PAUL
HASTINGS

CONFIDENTIAL TREATMENT REQUESTED
BY DASH CORE GROUP, INC.
UNDER 17 C.F.R. §200.83
DASH-007

13. Is the application fully functioning or in early stages of development?

The Network has been fully operational since 2014. New features and enhancements are continuously added to the Network to facilitate greater adoption of Dash through improved functionality and security.

DCG submits that application of the factors identified in Director Hinman's speech to Dash and the Network further supports the no action position requested by DCG that Dash is not a security.

If you have any comments or questions, please do not hesitate to contact the undersigned.

[redacted]

EXHIBIT D

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
ENFORCEMENT

Via Email

July 2, 2024

Mr. Kevin S. Schwartz, Esq.
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019

Re: *SEC v. Coinbase, Inc.*, *et al.*, Case No. 1:23-cv-04738-KPF

Dear Kevin:

I write in response to your letter dated June 25, 2024 ("Letter"), summarizing your understanding of the SEC's positions concerning its Responses and Objections ("Responses and Objections") to Coinbase's First Request for the Production of Documents ("RFPs"), which the SEC served on May 23, 2024, and the meet and confers relating thereto held on June 13, 17, and 20, 2024. Below the SEC addresses each of the "General Issues" and "Specific RFPs" set forth in your Letter, to clarify the SEC's positions where necessary and to convey our understanding of Coinbase's positions, including regarding the claimed relevance of the documents the RFPs seek. But first, the SEC sets forth a summary of its efforts to respond to the RFPs (and to the concerns raised by you and your colleagues during the meet and confer process) and proposes an additional search in a good-faith effort to resolve the parties' disputes with respect to 12 of the 16 RFPs discussed in your Letter.

THE SEC'S EFFORTS AND PROPOSAL

Between May 24 and May 29, 2024, the SEC produced the entire non-privileged portion of its investigative files for the investigations captioned In the Matter of Coinbase, Inc. conducted under File Nos. HO-14315 and SF-04523 (the "Investigative File"). That production consisted of approximately 241,320 documents, and a volume of over 136 GB. The Investigative File consisted of all documents gathered in connection with the SEC's investigation of Coinbase in this matter, including all documents relied upon by the SEC in bringing this Action and/or forming the basis for the SEC's allegations set forth in the SEC's complaint in this case ("Complaint"). Given the SEC's comprehensive production of documents relevant to its claims in this matter, and as set forth in its Responses and Objections, the SEC objected to Coinbase's RFPs to the extent they sought documents outside of the Investigative File.[1] During the meet and confer process, the SEC further

[1] Specifically, in its Responses and Objections, the SEC objected to Coinbase's definition of the "SEC" or "Commission" to the extent it purported to include within the scope of any RFP SEC divisions and persons who did not conduct the Investigation or the instant civil enforcement action.

explained the contents of its Investigative File, the significant efforts that the SEC undertook to assemble those documents, and answered questions from Coinbase about it. As noted, the Investigative File contains all the documents in the SEC's possession at the outset of the matter upon which the SEC may rest its claims against Coinbase on the merits. It consists of an electronic production of nearly 4,000 documents, as well as a native production of over 237,000 publicly available documents about Coinbase's Platform, Prime brokerage services, and Staking Program, and the tokens at issue in the Complaint (the "Named Tokens"). All other materials the SEC may rely on to prove its claims against will either be collected by the SEC from third parties in discovery and produced to you or obtained by you directly. And, to the extent any other materials come to the SEC's attention that it may rely on in this litigation, it will produce them to you.

Notwithstanding this backdrop—and without waiving any of the SEC's objections—we offered to undertake additional reasonable searches of certain other Enforcement Division files [redacted] That includes, as your Letter acknowledges, three of the files identified in RFP No. 26—*Bittrex*, *Binance*, and *Payward Ventures* (Exchange). [redacted]

Your Letter indicates that the SEC's agreement to expend considerable time and resources searching these additional seven investigative files has not satisfied Coinbase's discovery demands.

Now, in a final, good-faith effort to fully resolve the disputes with respect to **RFP Nos. 2-6, 8, 15-17, 20-21, and 26**, and without waiving any of the objections set forth in its Responses and Objections, the SEC makes the following proposal:

First, with respect to RFP No. 26, the SEC will agree, as set forth in your Letter (at 4) to conduct reasonable searches of the *Wahi* and *Payward Ventures* (Staking) investigative files.

As such, the SEC objected on relevance and proportionality grounds to all RFPs seeking documents obtained or created by SEC divisions, offices, or employees other than those who conducted the Investigation. The SEC further objected to Coinbase's overbroad definition of "Investigation" to the extent any RFPs (using or relying on such definition) sought documents beyond the Coinbase investigative file, on the grounds that such RFPs are overbroad, unduly burdensome, oppressive, and not proportional to the needs of the case. On the basis of those objections, the SEC stated it would search for and produce non-privileged responsive documents only to the extent they were part of the Investigative File.

The SEC's search of the *Wahi* investigative file would include searches relating to the Named Tokens and Coinbase's trading platform and Prime services, and the SEC's search of the *Payward Ventures* (Staking) investigative file would be limited to Coinbase's Staking Program. (The proposed search terms are set forth in Attachment A.)

Second, as discussed during the meet and confer process, extending Coinbase's RFPs to SEC divisions and offices *outside of* the Enforcement Division far exceeds the bounds of proportionate discovery in this case, would yield no relevant evidence, and imposes an undue burden on the SEC. Nevertheless, in the spirit of compromise and to achieve final resolution of these 12 RFPs, the SEC would agree to conduct a search of the emails of a discrete number of custodians within the SEC's Division of Corporation Finance and Strategic Hub for Innovation and Financial Technology ("FinHub"), to identify and produce responsive communications between the SEC and any of the Named Token issuers and developers. (The proposed custodians and search terms are set forth in Attachment A.)

Please let us know if Coinbase is willing to accept the SEC's proposal, in which case the parties will have agreed to resolve all disputes with respect to RFP Nos. 2, 3, 4, 5, 6, 8, 15, 16, 17, 20, 21, and 26.

SUBSTANTIVE RESPONSES TO COINBASE'S JUNE 25th LETTER

The SEC addresses each of the "General Issues" and "Specific RFPs" set forth in your Letter, in order and as follows:

GENERAL ISSUES

Documents Held By Non-Investigatory Personnel

As set forth in the SEC's Responses and Objections as discussed *supra* (at 1 & n. 1), to the extent Coinbase's RFPs seek documents outside of the Investigative File, including documents outside the SEC Enforcement Division, the RFPs are not relevant or proportional to the needs of the case, and the undue burden that would be imposed by extending such RFPs to other SEC divisions and offices outweighs any possible benefit to the case. During the meet and confer process, Coinbase was unable to sufficiently explain how its RFPs' requests for documents outside of the Enforcement Division are proportional to the needs of the case, or how the potential benefit or relevance of that material—which in the SEC's view is nonexistent—outweighs the significant burden Coinbase seeks to impose on the SEC to identify, search, and review the email, databases, and files of several other SEC divisions and offices (e.g. Corporation Finance, Trading and Markets, FinHub, Examinations, Office of the Chief Accountant, Investment Management, Office of Public Affairs), and of the SEC's Chair and other Commissioners. As stated during the meet and confer process, such an unduly burdensome search would yield documents that are (i) privileged, (ii) public (and thus available to Coinbase), and/or (iii) duplicative of what the SEC already produced [redacted]
Nevertheless, to achieve resolution of the above-listed RFPs, the SEC would agree to search the email of the Corporation Finance and FinHub custodians specified in Attachment A. If

Coinbase is unwilling to accept the SEC's proposal, then the SEC agrees the parties will be at an impasse on this issue.

Documents Relevant to Coinbase's Defenses

During the June 13 meet and confer call, and as summarized in an email I sent following that call (*see* Attachment B), Coinbase asked if it was the SEC's position that it would not produce documents concerning Coinbase's fair notice and other affirmative defenses on the grounds that such defenses are meritless and thus documents (if any) related thereto are not the proper subject of discovery. In response to this question, the parties discussed, among other things, Judge Failla's opinion and order on Coinbase's motion for judgment on the pleadings ("MJOP") (and the remaining viability, if any, of certain defenses) and the SEC's relevance objections to producing internal SEC communications and documents and SEC communications with other government agencies. To be clear, the SEC *does* believe that the Court has already rejected Coinbase's fair notice, APA (or "abuse of discretion") and "Major Questions Doctrine" ("MQD") defenses, meaning that discovery into those failed defenses is improper.[2] In any event, Coinbase has also failed even to demonstrate that the discovery it seeks (namely, internal SEC documents and non-public communications with other agencies, all of which are likely privileged) is relevant to its fair notice and other defenses, even were the defenses viable (which they are not).

Coinbase's Fair Notice Defense

It is apparent from the meet and confer process that the parties have a pronounced disagreement as to whether internal SEC documents and non-public inter-agency communications (aside from their likely privileged status) are relevant to Coinbase's fair notice defense. As you and your colleagues stated repeatedly during the meet and confer process, Coinbase believes internal SEC documents and inter-agency communications are relevant to its fair notice defense because such documents "inform" the fair notice "inquiry." You further stated Coinbase's view that the fair notice inquiry is "not limited to public statements alone" and that internal SEC documents and its communications with other government agencies are relevant to what market participants "could glean" from the SEC's public statements and/or its inaction or silence. Coinbase cited no caselaw or other authority to support its position. The SEC accordingly disagreed with Coinbase's position and stated that courts in crypto enforcement actions have consistently found internal SEC documents to be entirely irrelevant to the fair notice inquiry and have focused instead on the relevant statute and case law (*Howey* and its progeny), and on the SEC's public statements and official actions, including other enforcement actions filed and published guidance. As set forth in the SEC's pre-motion conference request to quash Coinbase's improper Fed. R. Civ. P. 45 subpoena to the SEC's Chair, examples of these cases include *Kik Interactive*, *LBRY*, and *Terraform Labs*. D.E. 133 at 2-3.

[2] As explained in our pre-motion conference request to quash Coinbase's improper Fed. R. Civ. P. 45 subpoena to the SEC's Chair, Coinbase's equitable defenses (equitable estoppel, unclean hands, and laches) are also meritless. D.E. 133 at 2-3.

Coinbase's Other Defenses

As set forth in my June 13 email, the SEC asked Coinbase—by reply email or on the next scheduled meet and confer call—to identify which of its RFPs seek documents relevant to Coinbase's affirmative defenses (and which defenses relate to which RFP) and explain how the documents sought by each such RFP are relevant to the specified defenses. *See* Attachment B. Coinbase did not provide the requested information in writing. Accordingly, the SEC disagrees with your Letter's apparent assertion that Coinbase provided all of this information—you only identified certain RFPs (e.g., RFP Nos. 13, 15, and 28) relating to your fair notice defense. You did identify four RFPs—from among those your Letter indicated Coinbase is now "willing to reserve its position" on (RFP Nos 7, 9-12, 19, 23-24, 29, and 30)—as calling for documents relating to three defenses other than fair notice.[3] Please confirm Coinbase will no longer seek documents responsive to these RFPs. If Coinbase is unwilling to so confirm, please provide the remainder of the information requested in my June 13 email with respect to those 10 RFPs and any other RFPs to which Coinbase believes its equitable estoppel, unclean hands, laches, and other defenses (other than fair notice) apply.

SPECIFIC REQUESTS FOR PRODUCTION

Investigative Files

The Coinbase Investigative File (RFP No. 1)

With respect to RFP No. 1, we have agreed to produce, and have already produced, to Coinbase the entire non-privileged part of the Investigative File, including information the SEC relied on in preparing the Complaint and other non-privileged documents obtained in the course of the SEC's investigation. As stated in your Letter, Coinbase's position is that "any file for any investigation that formed the basis for the complaint should be produced, not just the Coinbase investigative file." We explained during the meet and confer process that the Coinbase Investigative File includes all documents forming the basis for the complaint and thus, the SEC has already produced all documents responsive to RFP No. 1. Lastly, the SEC agreed that it would log all privileged communications and documents contained in the Investigative File. Given the foregoing, the parties are not, or at least should no longer be, at any impasse with respect to RFP No. 1.

SEC's Other Investigative Files (RFP No. 26)

Notwithstanding and without waiving the SEC's relevance, proportionality, undue burden, and other objections to RFP No. 26, and as described above, the SEC is already undertaking efforts to conduct a reasonable search of three of the 11 Enforcement Division

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[3] Specifically, Coinbase identified RFP No. 9 as seeking documents relevant to its equitable estoppel and unclean hands defenses. (In discussing RFP No. 9, you alleged that the SEC harmed Coinbase through "adverse communications" and "threats" made to person(s) regarding Coinbase's business but refused to identify such person(s). And you acknowledged such allegation appears nowhere in Coinbase's Answer.) Coinbase also identified RFP Nos. 19 and 22 as seeking documents relevant to its MQD defense, and RFP No. 29 as relevant to its APA (so-called "abuse of discretion") defense.

investigative files (*Bittrex*, *Binance*, and *Payward Ventures* (Exchange)) identified in RFP No. 26 [redacted] Furthermore, as set forth at the outset of this letter, the SEC is now proposing to also search two additional files (*Wahi* and *Payward Ventures* (Staking)) [redacted] The SEC is not willing to log any responsive documents that it withholds from among these additional investigative files on the basis of privilege given that the documents in these files live at the outside periphery of information that is relevant and proportional to the needs of the case. Moreover, conducting a reasonable search [redacted] requires significant and time-intensive efforts.[4] An *additional* requirement that the SEC log every privileged communication or document from these *non-Coinbase* investigative files would constitute an extraordinary burden that is not required by the Federal Rules of Civil Procedure. We know this burden would be extraordinary because, to date, the SEC has expended nearly 375 work hours to conduct a privilege review and log documents from the Coinbase Investigative File. [redacted] That is not tenable nor reasonable considering the significant extent to which the SEC has gone, and is willing to go, to work with Coinbase and avoid unnecessary discovery disputes. If Coinbase is unwilling to accept the SEC's proposal set forth at the outset of this letter, then the parties will be at impasse with respect to RFP No. 26.

Documents Concerning Coinbase and the Named Tokens and Services (RFP Nos. 2, 3, 4, 5, 6, 15, 16, 17, 20, and 21)

In producing the Investigative File, the SEC has already produced non-privileged documents responsive to RFP Nos. 2-5, 15-17, and 20-21. [redacted] Now, as set forth in the SEC's proposal (at 1), the SEC also would agree to conduct a reasonable search to identify and produce non-privileged documents responsive to these requests from the *Wahi* and *Payward Ventures* (Staking) investigative files, and from identified custodians in the SEC's Division of Corporation Finance and FinHub, if the parties can agree that such a search would resolve all disputes with respect to these 10 RFPs (and RFP No. 8, discussed below). If Coinbase cannot so agree, then the parties will be at an impasse with respect to these 10 RFPs.

The SEC takes issue with your Letter's summary of the disputes concerning RFP Nos. 2-6, 15-17, and 20-21. For one, the SEC *does* dispute that RFP Nos. 3, 4, 5, 6, and 15 seek relevant information, as set forth in the SEC's Responses and Objections. Also, with respect to RFP Nos. 2, 16, 17, 20, and 21, the SEC, as noted above (at 2, n.1) objected on relevance and proportionality grounds to the extent any RFPs seek documents obtained or

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[4] As you acknowledged in your Letter, the SEC indicated it would take steps to assess the burden of having to search the investigative files identified in RFP No. 26. The SEC did so with respect to the 11 files identified in RFP No. 26, not including *Bittrex*, *Binance*, and *Payward Ventures* (Exchange) because it has already agreed to search and produce documents from those files. Running searches for "Coinbase" and each of the 12 Named Tokens and the associated issuers and developers identified in the Complaint yielded the following "hit" results: *Kik Interactive* (24,216), *Telegram* (35,630), *Ripple Labs* (349,548), *LBRY* (6,378), *Wahi* (13,821), *Genesis* (16,381), *Terraform Labs* (1,625,352), and *Payward Ventures/Kraken Staking* (39,990).

created by SEC divisions, offices, or employees other than those who conducted the pre-suit investigation in *this* case. Your Letter does not summarize the parties' respective positions with respect to the enumerated RFPs. The SEC does so below.

RFP Nos. 2 and 3

In discussing RFP Nos. 2 and 3, you stated Coinbase's position that internal SEC emails responsive to these RFPs—for example, an internal SEC email asking, "Is SOL a security?"—would be relevant to the *Howey* analysis for SOL and "may bear" on the "SEC's credibility" and (claimed) "conflicting positions." We disagreed and refuted the notion that internal SEC views or the "SEC's credibility" are a part of or relevant to whether any of the 12 Named Tokens in this case were offered or sold as investment contracts under *Howey*—an objective inquiry based on the economic reality of the transactions at issue. In applying *Howey*, courts in crypto enforcement cases have uniformly considered token issuers' representations and inducements to investors, not the SEC's internal views about those tokens and you have pointed us to no case to the contrary. Coinbase also indicated RFP Nos. 2 and 3 are relevant to its fair notice defense. As discussed above, the SEC disagrees that internal SEC communications and documents are relevant to how courts assess fair notice, especially in crypto enforcement cases.

RFP Nos. 4, 5, and 6

During the meet and confer, Coinbase's stated position was that internal SEC documents and SEC communications with other government agencies responsive to RFP Nos. 4-6 are relevant to Coinbase's fair notice defense. During the discussion about RFP No. 6 specifically, you indicated that a hypothetical email between the SEC and CFTC in which the SEC stated a position on its authority to regulate crypto assets would be relevant to Coinbase's fair notice defense. But, as I noted during that call, market participants can glean nothing from a *non-public*, inter-agency email and you have pointed us to no case reviewing inter-agency communications in determining the fair notice question. As discussed *supra* (at 4-5), the SEC disagrees with Coinbase's conception of what is relevant to the fair notice inquiry and believes that conception is misguided under applicable law.

RFP Nos. 15, 16, and 17

The SEC has already produced documents from the Coinbase Investigative File [redacted] namely, documents relevant to whether the 12 Named Tokens were offered and sold as investment contracts under *Howey* (RFP No. 15) and documents concerning the Named Tokens' ecosystems (RFP Nos. 16 & 17). Coinbase believes it is *also* entitled to internal SEC documents, communications, and analyses concerning "how the securities laws would be applied to digital assets" (Letter at 4, n.1), and that such documents are relevant to the SEC's claims and Coinbase's fair notice defense. In discussing RFP No. 15, for example, you posited that if the SEC has internal "guideposts" as to what a "common enterprise" is or what "reasonable expectation of profits" means (even if beyond the Named Tokens), then that information is relevant. As discussed herein, the SEC disagrees that any such internal "guideposts" or similar documents, information, or analysis are relevant to the *Howey* analysis

of the 12 Named Tokens or to any fair-notice inquiry. In addition, the SEC stated during the meet and confer that, to the extent RFP Nos. 15, 16, and 17 seek internal SEC communications and documents regarding the application of *Howey*, including the role a token's ecosystem plays or might play in that application, such communications and documents are privileged. You did not necessarily disagree but said there could be "analyses" or a "compilation of information" that might be responsive and not privileged. In response, we stated that any "analyses" (and likely the act of compiling information) would be privileged, but more importantly that any information compiled would either be public and thus available to Coinbase or among the voluminous web captures and other relevant documents the SEC has already produced in this case. As such, Coinbase has not sufficiently demonstrated how additional searches or additional productions beyond those the SEC has already undertaken or agreed to undertake for RFP Nos. 15-17 are proportional to the needs of this case.

RFP Nos. 20 and 21

The SEC has already produced documents responsive to RFP Nos. 20 and 21 concerning the Coinbase Staking Program. Further, as part of the proposal set forth above and without waiving its objections, the SEC is willing to conduct a search of the *Payward Ventures* (Staking) investigative file to identify and produce non-privileged documents relevant to Coinbase's unregistered offers and sales of its Staking Program. The SEC is willing to do so notwithstanding the fact (as we conveyed during the meet and confer process) there have been and are no other investigations that we are aware of involving or regarding Coinbase's offers and sales of its staking program. If Coinbase is unwilling to accept the SEC's proposal, then the SEC reaffirms its position that it will not search for material outside of the Investigative File.

Communications with Issuers/Developers of the Named Tokens (RFP No. 8)

In producing the Investigative File, the SEC has already produced non-privileged documents responsive to RFP No. 8. And the SEC has offered to, and is already undertaking reasonable efforts, to identify and produce additional responsive material from at least seven other investigative files, including the *Binance*, *Bittrex*, and *Payward Ventures* (Exchange) files. Now, as set forth in the SEC's proposal above (at p.1), the SEC would also agree to conduct a reasonable search to identify and produce non-privileged documents responsive to RFP No. 8 from the *Wahi* investigative file and from the SEC's Division of Corporation Finance and FinHub, if the parties can agree that such a search would resolve all disputes with respect to RFP No. 8 and the other enumerated RFPs. If Coinbase cannot so agree, then the parties will be at an impasse with respect to RFP No. 8, and the SEC will not undertake the proposed searches, which it continues to view as irrelevant and wholly disproportional to the needs of the case.

Documents Concerning Public Statements by the SEC (RFP Nos. 13, 14, and 28)

As set forth in the SEC's Responses and Objections, RFP Nos. 13, 14, and 28 are unduly burdensome, overbroad, and oppressive, and they seek documents that are not relevant or proportional to the needs of the case, publicly available, and privileged. With respect to relevance, your Letter states that these three RFPs are relevant to Coinbase's fair

notice defense, and during the meet and confer you shared Coinbase's position that internal SEC communications and documents "inform the [fair notice] inquiry." We disagreed and directed you to applicable fair-notice cases in the crypto enforcement context, including *Kik Interactive* and *Terraform Labs*. As discussed above (at 4-5), internal SEC documents are not, and cannot be, relevant to any fair notice inquiry based on applicable case law, including the Court's opinion and order on Coinbase's MJOP. Also, though not mentioned in your Letter, during the meet and confer you also shared Coinbase's position that internal SEC communications and documents sought by the subject RFPs would also be relevant to the SEC's affirmative claims. We disagreed and stated the SEC's position that what the SEC communicated internally about any crypto asset—apart from likely being privileged—is not relevant to and has no bearing on the fact-finder's objective inquiry as to whether such token was, or is being, offered or sold as an investment contract under *Howey*. Accordingly, any benefit to Coinbase from documents sought by RFP Nos. 13, 14, and 28 is nil and thus far outweighed by the burden Coinbase seeks to impose on the SEC to search the email and files of the SEC Chair, the Office of Public Affairs, the Division of Corporation Finance, the Office of the Secretary, and other SEC divisions and offices.

Documents Concerning Coinbase's Form S-1 and Direct Public Offering (RFP No. 27)

As set forth in the SEC's Requests and Objections, Request No. 27 is unduly burdensome, overbroad, and oppressive, and seeks documents that are (i) not relevant, (ii) not proportional to the needs of the case, (iii) publicly available (e.g. filed registration statements and amendments and attachments thereto), (iv) already in Coinbase's possession (e.g. correspondence between Coinbase and the SEC's Division of Corporation Finance), and (v) privileged (e.g. internal SEC communications). During the meet and confer, Coinbase claimed that the documents sought by RFP No. 27 are relevant to Coinbase's fair notice defense. When asked if RFP No. 27 applied to any of Coinbase's other defenses, you indicated that it "might" also be relevant to, or "could potentially inform," Coinbase's other equitable defenses, though when asked you declined to specify which. With respect to Coinbase's fair notice defense, you posited that the internal SEC documents sought by RFP No. 27 could "inform the [fair notice] inquiry." Again, internal SEC documents are not, and cannot possibly be, relevant to any fair notice inquiry based on applicable case law, including the Court's opinion and order on Coinbase's MJOP. Accordingly, RFP No. 27 does not seek relevant information, and during the meet and confer Coinbase failed to sufficiently explain how RFP No. 27 is proportional to the needs of the case. And, as demonstrated during the meet and confer, the documents sought by RFP No. 27 would be of little to no benefit to the resolution of this case, and such benefit is far outweighed by the burden Coinbase seeks to impose on the SEC to search the email and internal databases of its Division of Corporation Finance, Office of the Chief Accountant, and other SEC divisions and offices that may have been involved in the disclosure and accounting review of Coinbase's Form S-1. Accordingly, the SEC agrees that the parties are at an impasse with respect to RFP No. 27.

* * * * *

Please let us know if Coinbase is willing to accept the SEC's proposal as set forth above or, at least, to meet and confer regarding that proposal.

Regards,

/s/ Nicholas C. Margida
Nicholas C. Margida

Counsel for Plaintiff SEC

Attachment A
Letter to Kevin Schwartz
July 2, 2024

Attachment A – Proposed Search Terms and Custodians

The *Wahi* Investigative File

Search Terms

- Coinbase /2 exchange
- Coinbase /2 clearing
- Coinbase /2 broker!
- Coinbase /2 platform
- Coinbase / 2 Prime
- SOL
- @solana.org
- @solana.com
- @solana.foundation
- ADA
- @cardanofoundation.org
- @iohk.io
- @emurgo.io
- Polygon
- MATIC
- @polygon.technology
- @protocol.ai
- Filecoin
- FIL
- @fil.org
- Sandbox
- SAND
- @sandbox.game
- @animocabrands.com
- @pixowl.com
- Axie
- AXS
- @axieinfinity.com
- @skymavis.com
- Chiliz
- CHZ
- @chiliz.com
- @mediarex.com
- Dapper Labs
- (FLOW /2 token)
- (FLOW /2 asset)

- (FLOW /2 crypto*)
- @dapperlabs.com
- "Internet Computer"
- ICP
- internetcomputer.org
- @dfinity.org
- NEAR /2 (protocol or token)
- @near.foundation
- @near.org
- Voyager
- VGX
- @investvoyager.com
- (DASH /2 token)
- (DASH /2 asset)
- (DASH /2 crypto*)
- @dash.org

The *Payward Ventures* (Staking) File

Search Term

- "Coinbase" /s stak*

Division of Corporation Finance

Custodians

- Jonathan Ingram
- Michael Seaman
- Mark Vilardo

Search Terms

- SOL
- @solana.org
- @solana.com
- @solana.foundation
- ADA
- @cardanofoundation.org
- @iohk.io
- @emurgo.io
- Polygon
- MATIC

- @polygon.technology
- @protocol.ai
- Filecoin
- FIL
- @fil.org
- Sandbox
- SAND
- @sandbox.game
- @animocabrands.com
- @pixowl.com
- Axie
- AXS
- @axieinfinity.com
- @skymavis.com
- Chiliz
- CHZ
- @chiliz.com
- @mediarex.com
- Dapper Labs
- (FLOW /2 token)
- (FLOW /2 asset)
- (FLOW /2 crypto*)
- @dapperlabs.com
- "Internet Computer"
- ICP
- internetcomputer.org
- @dfinity.org
- NEAR /2 (protocol or token)
- @near.foundation
- @near.org
- Voyager
- VGX
- @investvoyager.com
- (DASH /2 token)
- (DASH /2 asset)
- (DASH /2 crypto*)
- @dash.org

FinHub

Custodians

- Valerie Szczepanik
- Amy Starr

Search Terms

- SOL
- @solana.org
- @solana.com
- @solana.foundation
- ADA
- @cardanofoundation.org
- @iohk.io
- @emurgo.io
- Polygon
- MATIC
- @polygon.technology
- @protocol.ai
- Filecoin
- FIL
- @fil.org
- Sandbox
- SAND
- @sandbox.game
- @animocabrands.com
- @pixowl.com
- Axie
- AXS
- @axieinfinity.com
- @skymavis.com
- Chiliz
- CHZ
- @chiliz.com
- @mediarex.com
- Dapper Labs
- (FLOW /2 token)
- (FLOW /2 asset)
- (FLOW /2 crypto*)
- @dapperlabs.com
- "Internet Computer"
- ICP
- internetcomputer.org
- @dfinity.org

Attachment A
Letter to Kevin Schwartz
July 2, 2024

- NEAR /2 (protocol or token)
- @near.foundation
- @near.org
- Voyager
- VGX
- @investvoyager.com
- (DASH /2 token)
- (DASH /2 asset)
- (DASH /2 crypto*)
- @dash.org

Margida, Nicholas

From: Margida, Nicholas
Sent: Thursday, June 13, 2024 2:22 PM
To: Adam M. Gogolak; David P.T. Webb; James M. McDonald; Julia A. Malkina; Kathleen S. McArthur; Kevin S. Schwartz; Olivia G. Chalos; Sarah K. Eddy; Sijin Choi; Steven R. Peikin; William Savitt
Cc: Costello, Patrick R.; Mendel, David S; Mancuso, Peter; Dunnan, Rebecca
Subject: Follow up on Initial Meet and Confer re: Coinbase's Requests for Production

Kevin,

Following up on this morning's telephonic meet and confer regarding Coinbase's requests for production ("RFPs"), we heard you ask if it is the SEC's position that it would not produce documents concerning Coinbase's affirmative defenses on the grounds that such defenses are meritless and thus documents related thereto are not relevant. In response to this question, the parties discussed, among other things, the import of the Court's March opinion and order on Coinbase's motion for judgment on the pleadings (and the remaining viability of certain defenses) and the SEC's relevance objections to producing certain types of documents, such as internal documents. It occurred to us after the call that in order to fully answer your question, with all appropriate context, the SEC would like (and indeed, needs) to better understand which of Coinbase's RFPs you all believe seek documents related to Coinbase's affirmative defenses and how the defenses apply. I know we discussed on this morning's call Coinbase's Administrative Procedures Act/"abuse of discretion" defense as relating to RFP No. 29, and its fair notice defense with respect to RFP No. 6. But it would be helpful, during the continuation of the meet and confer next week (or by reply email if preferable), if you could: (1) identify which of Coinbase's RFPs seek documents concerning Coinbase's defenses; (2) identify which defenses apply to each such RFP; and (3) explain how the documents sought by each such RFP are relevant to the specified defense(s). Then, we can fairly consider the question you posed this morning and whether the SEC is willing to search and/or conduct additional searches for documents concerning the enumerated RFPs that you inform us relate to Coinbase's defenses. Thank you.

Regards,
Nick

Nick Margida
Senior Trial Counsel
U.S. Securities & Exchange Commission
Division of Enforcement
100 F Street, N.E.
Washington, DC 20549-5977
(202) 551-8504

EXHIBIT E

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WASHINGTON, D.C. 20036-3215

(202) 326-7900
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March 15, 2021

VIA ECF
Hon. Sarah Netburn
United States District Judge
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: *SEC v. Ripple Labs, Inc.* et al., No. 20-cv-10832 (AT)(SN) (S.D.N.Y.)

Dear Judge Netburn:

We write on behalf of Defendants Ripple Labs Inc. ("Ripple"), Bradley Garlinghouse, and Christian A. Larsen (collectively "Defendants"), pursuant to Part II.C of the Court's Individual Practices, to request a Local Rule 37.2 conference.

After three lengthy video conferences and an exchange of letters, Defendants and the Securities and Exchange Commission ("SEC") have reached an impasse regarding the SEC's refusal to search for and produce information related to the core issues of this litigation: Whether sales of XRP were unregistered securities offerings, whether Mr. Garlinghouse and Mr. Larsen (the "Individual Defendants") knowingly or recklessly failed to recognize them as such, and whether Ripple had fair notice that XRP sales required registration. Specifically, the SEC has refused to search for and produce (i) a single document concerning bitcoin or ether – two virtual currencies that are closely analogous to XRP; (ii) internal communications of any sort, even where they reveal the market's and the SEC's own prolonged uncertainty over whether XRP was a security; and (iii) any documents from ten of the nineteen custodians Defendants proposed (a limitation that lacks any basis other than the SEC's refusal to search for and produce documents in categories (i) and (ii)). The requested discovery easily meets the broad standard of relevance under Federal Rule of Civil Procedure 26(b)(1) and, despite multiple opportunities to do so, the SEC has failed to substantiate any privilege or burden claim that would excuse the SEC from searching for it. The Court should therefore compel the SEC to conduct a reasonable search for and produce all non-privileged documents responsive to the disputed requests.

I. Whether The Market And The SEC Itself Considered XRP Sales To Be Securities Offerings Are Central Questions In This Litigation.

On December 22, 2020 – as the SEC's Chair and its directors from the prior administration were walking out the door – the SEC filed this case alleging that sales over the last eight years of XRP, the third-largest digital asset in the world by market value, had been a massive unregistered securities offering in violation of Section 5 of the Securities Act of 1933. The SEC does not contend that Ripple or the Individual Defendants made any effort to conceal their activities, nor could they. XRP is a well-known and widely used digital asset, with global trading volume since inception of between $700 billion and $1 trillion. The SEC's complaint cites liberally from "public statements" that Ripple made to the market regarding its activities, and in particular the nature, use-case, and sale of XRP. Am. Compl. ¶¶ 61-64. For almost a decade, the SEC watched as XRP grew and developed, all the while issuing no formal guidance that its sales may be illegal. The SEC did, however, announce that sales of two similar digital assets – bitcoin and ether – were *not* securities offerings.[1] Moreover, in 2015, the Department of Justice and FinCEN entered into a settlement agreement with Ripple that determined XRP to be a "virtual currency" – again, like bitcoin and ether. As a result, Ripple subsidiary XRP II, LLC was subject to anti-money laundering requirements as a Money Service Business. Am. Compl. ¶ 379. As the SEC well knows, XRP has been listed on more than 200 virtual currency exchanges. Prior to listing XRP on their platforms these independent businesses must have concluded that XRP was not a security (likely with the guidance of sophisticated securities counsel). *See id.* ¶ 161 ("none of [these platforms] were registered with the SEC" as securities exchanges).

The SEC now contends that under "a straightforward application of a well-settled legal test" – the Supreme Court's 75-year old precedent in *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946) – Defendants' sales of XRP are and always have been an unregistered securities offering. *See* Letter from Jorge Tenreiro to the Honorable Analisa Torres, ECF No. 54 at 2 (Mar. 9, 2021). In characterizing this as the "single issue" to be decided, and a question of "strict-liability," *id.* at 1, the SEC ignores at least three questions central to this case:

- *First*, the *Howey* test is not a sterile exercise to be conducted in a vacuum, but rather requires the Court to consider – among other factors – "what character the instrument is given in commerce by the terms of the offer, the plan of distribution, and the economic inducements held out to the prospect." *Marine Bank v. Weaver*, 455 U.S. 551, 556 (1982) (internal quotation marks omitted); *see also Warfield v. Alaniz*, 569 F.3d 1015, 1021 (9th Cir. 2009) (the Court will "conduct an objective inquiry into the character of the instrument or transaction offered based on what the purchasers were 'led to expect.'") (quoting *W.J. Howey*, 328 U.S. at 299). As explained below, the SEC itself was a central player in the market-wide discussion, analysis, and practice about whether and under what

[1] William Hinman, *Digital Asset Transactions: When Howey Met Gary (Plastic)*, Remarks at the Yahoo Finance All Markets Summit: Crypto (June 14, 2018), *available at* https://www.sec.gov/news/speech/speech-hinman-061418.

circumstances sales of digital assets could be securities offerings. In other words, the SEC itself helped shape the character of XRP and other digital assets in commerce and what market participants could expect.

- *Second*, the SEC chose to charge the Individual Defendants with aiding and abetting Ripple's violations of Section 5. To prove this, the SEC must show that the Individual Defendants knew or recklessly disregarded that they were associating themselves with something "improper" and nonetheless "substantially assisted" Ripple in committing that violation. *SEC v. Apuzzo*, 689 F.3d 204, 211 (2d Cir. 2012); *SEC v. Espuelas*, 905 F. Supp. 2d 507, 517-18 (S.D.N.Y. 2012). The SEC has thus chosen to put at issue not only *whether* XRP sales were securities offerings, but whether the Individual Defendants knowingly or recklessly failed to recognize them as such. 15 U.S.C. § 77o(b).

- *Third*, Ripple has pleaded a well-founded defense that it was deprived of fair notice that XRP sales required registration by the SEC's own conduct, including its public announcements that similar digital currency sales were not securities offerings, as well as the course of dealing over the eight years preceding this action.[2]

The SEC's own conduct confirms that information about how those in the market viewed, interacted with, and classified XRP over the eight years prior to filing this case is relevant to each of these three questions. On the day discovery opened, the SEC served 13 third-party subpoenas, and it has since served 37 more, addressed to these very questions. Among other things, the SEC's subpoenas seek "[a]ll documents and communications regarding the legal or regulatory status of XRP, including but not limited to, documents concerning whether XRP is a 'security' within the meaning of the U.S. securities laws and/or the application of the U.S. securities laws to the offer, purchase or sale of any XRP." *See, e.g.*, Ex. A, Subpoena to Coinbase, Document Request No. 7 (Jan. 29, 2021). The SEC has sent similar requests to each of the Defendants. Ex. B, Pl.'s First Set of Doc. Reqs. ("RFPs") to Ripple Labs Inc., Document Request No. 23 (Jan. 25, 2021); Ex. C, Pl.'s First Set of RFPs to Bradley Garlinghouse, Document Request No. 8 (Jan. 25, 2021); Ex. D, Pl.'s First Set of RFPs to Christian A. Larsen, Document Request No. 8 (Jan. 25, 2021).

But when Defendants served essentially the same discovery requests on the SEC, the SEC refused to produce virtually anything besides self-selected documents that it had placed in its "investigatory file." Specifically, on January 26, 2021, Defendants served the SEC with their First

[2] On March 9, 2021, the SEC filed a pre-motion letter setting forth the anticipated basis for a motion to strike Ripple's fair notice defense. ECF No. 54. Ripple will oppose this motion. But even if the SEC prevails, the discovery requested here is independently relevant to the *Howey* issue, the knowledge or recklessness element of the SEC's aiding and abetting claim against the Individual Defendant, and other affirmative defenses asserted by Ripple the SEC is not moving to strike. The Court need not delay resolving this dispute given that there are independent bases for the discovery sought that will be unaffected by any decision on the motion to strike. Further, the presiding district judge's case management order makes clear that "[t]he Court will not stay discovery pending its decision on any motion." *See Civil Case Management Plan and Scheduling Order (Torres, J.)*, ¶ 5.

Request for Production of Documents. *See* Ex. E. Request Nos. 4, 7, 8, 10, 11, and 14 seek documents concerning communications between the SEC and third parties about XRP, bitcoin, and ether. Request Nos. 4, 7, 8, and 10 seek such communications with third parties generally; Request No. 11 focuses on communications with third-party entities mentioned during the SEC's investigation; and Request No. 14 specifically seeks communications with other government entities about allegations in the complaint. Request Nos. 15 through 19 seek internal communications among SEC personnel – including staff, investor-facing personnel, and more senior officials who determine the agency's position – concerning whether digital assets or virtual currencies are securities. To provide reasonable guidance about the documents sought, Request Nos. 15 through 17 specifically cited public statements by SEC personnel that undermine the SEC's affirmative case and support Defendants' defenses, and seeks documents related to those statements.

On February 25, 2021 the SEC informed defendants that, for Requests No. 10 and 14 through 19, it would "withhold all Responsive documents."[3] Ex. F, Pl.'s Resps. and Objs. to Defs.' First RFPs, at 10-16 (Feb. 25, 2021). In each case, the basis for withholding documents consisted of a boilerplate statement that the documents are "neither relevant nor proportional to the needs of the case" and are "privileged and protected." *Id.* With respect to Request Nos. 4, 7, and 8, the Commission refused to search for documents outside of its "investigative file" in this case. *See id.* 6-9.

Despite three lengthy video conferences (on February 2, February 23, and March 11, 2021) and correspondence in which Defendants narrowed their requests and detailed the basis for them, the SEC has continued to refuse to produce several categories of documents responsive to Defendants' requests. Defendants attempted to meet the SEC halfway by limiting the disputed requests to communications about XRP, bitcoin and ether (forgoing discovery about other digital assets), and identifying a specific set of nineteen custodians whose files Defendants believe are most likely to include these responsive documents. In addition, Defendants proposed a review of the searchable files of the Office of Investor Education, which on information and belief would have received and responded to communications from members of the public regarding those three assets. *See* Ex. G, Letter from Reid Figel to Jorge Tenreiro, at 4 (Mar. 8, 2021).

The SEC nevertheless refuses to produce certain documents responsive even to Defendants' as-compromised Requests. True, the SEC has produced its self-defined investigative file regarding this matter. Further, it has belatedly committed to search for and produce both materials found in certain other identified investigative files and e-mails between certain identified custodians and third parties found by searching for the terms "XRP" or "Ripple." In other words, irrespective of the outcome of this motion, the SEC will produce documents regarding XRP and

[3] The limited exceptions were (i) the SEC's statements, in response to Request Nos. 15(b) and 17, that it "may" or "would produce" certain external communications pursuant to parallel FOIA requests, and (ii) with respect to Request No. 11, the SEC's concession that it would produce documents limited to those from its "investigative file" relating to this matter. Ex. F at 10-11; 13-15.

Ripple in the files of a subset of custodians that either were sent to or produced by third parties, but nothing else.[4]

The SEC still refuses to search for and produce: (i) documents regarding bitcoin or ether; and (ii) any internal communications whatsoever, even those bearing directly on the status of XRP. Further, the SEC narrowed the scope of its production by handpicking nine custodians, excluding – among others – Chairman Jay Clayton, Commissioner Elad Roisman, and a leading internal critic of the SEC's regulatory approach to cryptocurrency, Commissioner Hester Peirce. Ex. I, Email from Dugan Bliss to Collin White (Mar. 10, 2021). The SEC's explanation for excluding the ten other custodians Defendants had proposed was that the SEC itself had determined that the nine were likely to have the documents for which it was willing to search.

II. Evidence Concerning The SEC's Own Discussions And Views About Whether XRP, Bitcoin, And Ether Are Securities Is Relevant.

The SEC is improperly withholding relevant, potentially exculpatory evidence. In this case, the SEC is not a passive bystander or detached regulator pursuing a run-of-the-mill case against someone who violated established law or regulations. During the relevant period, the SEC itself was a central player in market-wide discussion, analysis, and practice about whether and under what circumstances sales of digital assets could be securities offerings. Because documents and communications – whether external or internal – regarding how XRP and two similar assets, bitcoin and ether, were perceived and treated by market participants and the SEC "bear[] on, or . . . reasonably could lead to other matters that could bear on," several issues that are "or may be in the case," they are relevant. *Schoolcraft v. City of New York,* No. 10 Civ. 6005, 2012 WL 2161596, at *12 (S.D.N.Y. June 14, 2012) (quotation omitted).

The SEC cannot reasonably dispute the relevance of these categories of documents. Nor does the SEC deny that it is in possession of such evidence. The public record reflects that at least by 2017 the SEC was considering and giving guidance on whether and how digital assets could be classified as securities. For example, in July 2017, the SEC issued a Report of Investigation concluding that DAO Tokens were securities. *Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO*, Securities Exchange Act Release No. 81207 (July 25, 2017), *available at* http://www.sec.gov/litigation/investreport/34-81207.pdf. Yet the SEC remained silent in the face of direct inquiries on the status of XRP,[5] and allowed market participants to proceed with sales and offers. In 2018, the SEC's Director of

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[4] The SEC initially proposed to do so only if Defendants withdrew the rest of their requests. Ex. H, Letter from Dugan Bliss to Andrew Ceresney et al. at 4-5 (Feb. 25, 2021). Only after Defendants informed the SEC that its proposal required unacceptable compromises of their discovery rights, *see* Ex. G, did the SEC abandon its improper demand and commit to search for and produce certain documents related to these topics. Ex. I, Email from Dugan Bliss to Collin White (Mar. 10, 2021).

[5] Or, on information and belief, the SEC expressly told third parties that no determination had been made that XRP was a security.

Corporate Finance publicly stated that bitcoin and ether were not "securities."[6] And its Strategic Hub for Innovation and Financial Technology issued a 38-factor test in 2019 that could not reasonably be read to suggest that XRP should be regulated as a security.[7] Commissioner Peirce compared the SEC's "Framework for 'Investment Contract" to a Jackson Pollock painting – "splashing lots of factors on the canvas without any clear message." Hester Peirce, SEC Commissioner, *How We Howey* (May 9, 2019), *available at* https://www.sec.gov/news/speech/peirce-how-we-howey-050919.

Based on information gleaned to date, it is clear that the SEC was told by sophisticated market participants that XRP was not a security and solicited feedback on that position, but did not provide a contrary public statement until it filed its allegations in this case in December 2020. Learning all there is to learn about these facts (whether through internal or external communications) is relevant to the defense and will be central to the Court's understanding of several issues critical to the case:

- To properly apply *Howey*, the Court must consider what "investors . . . contemplated"; their "understanding" of what the defendant would "do . . . to turn a profit"; and "market conditions." *Glen-Arden Commodities, Inc. v. Costantino*, 493 F.2d 1027, 1032-33 (2d Cir. 1974).

- To consider whether the Individual Defendants knew or were reckless in not recognizing that Ripple's sales of XRP were unregistered securities offerings, the Court must evaluate the reasonableness of those Defendants' conclusions in light of the current regulatory environment. *See Safeco Ins. Co. of America v. Burr*, 551 U.S. 47, 70 n. 20 (2007) (When "statutory text and relevant court and agency guidance allow for more than one reasonable interpretation," "a defendant who merely adopts one such interpretation" does not possess knowledge or recklessness); *see also SEC v. Kovzan*, No. 11-2017-JWL, 2012 WL 4819011, at *5 (D. Kan. Oct. 10, 2012) (accepting defendant's argument that "confusion within the SEC itself may be relevant to the degree of defendant's scienter – how reckless he was").[8] By charging the Individual Defendants with claims that require proof of knowledge or recklessness, the SEC has directly put at issue the relevance of the objective basis for the Individual Defendants' interpretations.

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[6] See n.1, *supra*.

[7] SEC, *Framework for "Investment Contract" Analysis of Digital Assets* (Apr. 3, 2019), *available at* https://www.sec.gov/corpfin/framework-investment-contract-analysis-digital-assets.

[8] If Ripple is found to have violated Section 5, the SEC's contributions to "years of considerable uncertainty as to the regulatory climate concerning" virtual currencies will also be relevant to appropriate remedies. *Arthur Lipper Corp. v. SEC*, 547 F.2d 171, 184 (2d Cir. 1976) (limiting SEC sanctions based on such uncertainty); *see also Rollins Envtl. Servs. (NJ) Inc. v. EPA*, 937 F.2d 649, 653-54 (D.C. Cir. 1991) (mitigating penalty where publicly available information demonstrated that "various EPA offices [had] been giving conflicting guidance").

- And to determine whether Ripple had fair notice that the SEC would classify XRP as a security, the Court must consider whether a "person of ordinary intelligence" in Ripple's position had "a reasonable opportunity to know what is prohibited." *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972), or whether instead "substantial uncertainty" deprived market participants of fair notice, *Upton v. SEC*, 75 F.3d 92, 98 (2d Cir. 1996); *see also Gen. Elec. Co. v. EPA*, 53 F.3d 1324, 1332-34 (D.C. Cir. 1995), *as corrected* (June 19, 1995) (holding that "where the agency itself struggles to provide a definitive reading of the regulatory requirements, a regulated party is not 'on notice' of the agency's ultimate interpretation of the regulations, and may not be punished," and that "it is unlikely that regulations provide adequate notice when different divisions of the enforcing agency disagree about their meaning").

Each of the categories of documents in dispute goes directly to these issues.

A. Internal Documents and Communications

Any relevance objection to searching for responsive internal communications lacks merit. At least two sub-categories of internal communications are relevant. *First*, internal SEC documents regarding communications with third parties will likely reveal market views on XRP and additional contacts that external communications only would not show. The internal communications themselves need not be admissible to be discoverable. *See* Fed. R. Civ. P. 26(b)(1). The SEC already knows (as Defendants do not) which of the more than 200 exchanges and innumerable XRP purchasers have expressed relevant views to the SEC. Defendants should not have to propound many separate discovery requests to identify those non-parties, and those non-parties should not be burdened with unnecessary subpoenas, when the SEC can provide that information far more efficiently, for example, by producing all memoranda covering discussions and exchanges with those third parties. *Second*, documents touching on the views of the agency charged with enforcing the securities laws may lead to admissible evidence supporting Ripple's fair notice defense and the Individual Defendants' defense that they could not have had the requisite state of mind to be liable for aiding and abetting.

B. Documents Regarding Bitcoin and Ether

The SEC rests its contention that documents regarding bitcoin and ether are irrelevant entirely on its conclusory assertion that those assets are "not at issue in this case." Ex. H at 2. Not so. Defendants intend to show that, under a proper application of *Howey*, the economic substance of a transaction in XRP is no different from one in bitcoin or ether – currencies that Director Hinman publicly stated were not "securities." This information is also relevant to analyses being considered by our expert witnesses, and is likely to lead to evidence that may be used in the preparation of expert reports. The SEC's strategic reluctance to confront that comparison in putting on its case is no basis to deny Defendants discovery relevant to making it in theirs.

C. Additional Custodians

The SEC has given no independent basis for its refusal to produce documents from ten of the custodians Defendants proposed or to search the searchable files of the Office of Investor Education. There is every reason to believe the custodians whose files the SEC refuses to search – including the SEC's former Chairman, a current Commissioner, and certain senior officials in the Divisions of Corporation Finance and Enforcement – will have had custody of documents responsive to Defendants' requests. When pressed to explain its refusal to search those files, the SEC asserted that it had based its list on its investigation of who would be likely to have the documents it was agreeing to produce. Because the documents it has *refused* to produce are relevant, the SEC's refusal even to search the files of the other ten custodians stands undefended.

III. The SEC Has Not Substantiated Any Claim Of Privilege Or Other Basis For Withholding Relevant Evidence.

The SEC's claimed right to "withhold" such evidence otherwise rests on a mix of amorphous claims that the evidence is "privileged" or "protected" or somehow that its production would not be "proportional." None of these arguments has been substantiated, and none of them ultimately have any merit.

"Like any ordinary litigant, the Government must abide by the Federal Rules of Civil Procedure. It is not entitled to special consideration concerning the scope of discovery, especially when it voluntarily initiates an action." *SEC v. Collins & Aikman Corp.*, 256 F.R.D. 403, 414 (S.D.N.Y. 2009). That is particularly so where, as here, the SEC has elected to charge individuals with knowledge or recklessness based on a novel application of the law. *See SEC* v. *Heartland Advisors, Inc.*, No. 03-C-1427, 2006 WL 2547090, at *5 n.4 (E.D. Wis. Aug. 31, 2006) (noting that "a suit by the SEC is akin to a criminal prosecution in that it is accusing [a] private individual of wrong-doing" and its "interest . . . is not that it shall win a case, but that justice shall be done.") (internal quotation marks omitted).

While the SEC has failed to articulate the basis of its "proportionality" argument, there can be no serious argument that asking the SEC to search for records of 19 custodians is disproportionate in this case. Defendants have agreed to search 30 custodians for documents requested by the SEC. Moreover, the SEC is demanding that fifty third parties perform the very same types of searches. And the request that Defendants have made is no more burdensome than the types of searches that government agencies are routinely required to perform pursuant to the Freedom of Information Act, 5 U.S.C. § 552, searches conducted on behalf of members of the public who – unlike defendants here – may lack any tangible interest in the records sought. *Cf. Alexander v. F.B.I.*, 188 F.R.D. 111, 116 (D.D.C. 1998) ("'[d]iscovery in a FOIA action is extremely limited,' . . . especially when compared to discovery conducted in a traditional civil action.") (quoting *Katzman v. Freeh*, 926 F. Supp. 316, 319 (E.D.N.Y. 1996)). As noted, the Office of Investor Education, which would have received and responded to communications from members of the public, has its own searchable files.

Further, the SEC has not substantiated how – if at all – Defendants' document requests would be so burdensome to comply with that the SEC should be excused from producing relevant evidence. *Gross v. Lunduski*, 304 F.R.D. 136, 151 (W.D.N.Y. 2014) ("[g]eneralized objections that a discovery request is unduly burdensome are insufficient; rather, the party objecting to the requested discovery on the ground of undue burdensomeness must submit an affidavit or other evidence revealing the nature of the burden") (quoting *Brown v. Dep't of Corr. Servs.*, No. 09-CV-00949S(F), 2011 WL 2182775, at *16 (W.D.N.Y. June 2, 2011)).

To the extent the SEC is standing on its initial refusal to produce documents from outside of its investigative file that are responsive to Request Nos. 4, 7, and 8, nothing supports that limitation: It is far from unprecedented for a government agency, having initiated a civil enforcement action, to be required to search beyond its investigatory file in a particular matter. *See, e.g.*, *Solis v. Beacon Assoc. Mgmt. Corp.*, No. 10 Civ. 8000, 2011 U.S. Dist. Lexis 89353, ECF No. 79 (S.D.N.Y. 2011) (affirming magistrate's order compelling "disclosure of documents from other Department of Labor … investigations" involving "millions of documents in many cases throughout the country."); *SEC v. Sentinel Mgmt. Grp., Inc.*, No. 07 C 4684, 2010 WL 4977220, at *2 (N.D. Ill. Dec. 2, 2010) (holding that documents from related SEC investigation, including "internal SEC staff communications" and "internal memoranda" were relevant to state of mind, while rejecting SEC's argument "that its non-public 'perspectives' during the examination, if not communicated to [defendant] are not relevant" because "the SEC's silence on a practice arguably could be relevant to the SEC's allegation that [defendant] knowingly committed fraud").

The SEC's position here is remarkable not only on its own terms, but also in contrast to what the SEC itself routinely requires of other parties. Every day, the SEC dispatches investigative subpoenas to private companies and individuals across the country requiring them to conduct a good faith search of their files and to produce relevant documents. It is a matter of routine for such searches to include the electronic communications of relevant custodians. In this very case, Defendants have collectively produced more than 200,000 pages, and the SEC is seeking even more from Defendants and from fifty third parties. It is not disproportionate to require the SEC to conduct its own similar search.

As for privilege, the SEC has not asserted any privilege that would excuse it from even *searching* for responsive files, nor has it properly interposed any privilege objection that would excuse production. To the extent the agency seeks to cloak itself in the deliberative process privilege, we note that privilege is not absolute even if it applies, and courts have ordered protected materials produced where, as here, the information was not otherwise available. *SEC v. Merkin*, 283 F.R.D. 689, 694-98 (S.D. Fla. 2012). In any event, the SEC certainly has not identified any privilege that would attach to its correspondence regarding bitcoin and ether with *third parties*, much less to documents submitted *by* third parties to the SEC, and – at least outside of the law enforcement context – no such privilege exists. Even for internal documents, the categories noted above are plainly relevant to the defenses of lack of notice and lack of knowledge or recklessness,

especially when they relate to the views of third-party market participants and the SEC's own prolonged uncertainty about the status of XRP and other digital currencies. In any event, the SEC must conduct the relevant search before it can credibly make any privilege determination as to particular documents. *Kovzan*, 2012 WL 4819011, at *6 ("[T]he SEC has not yet conducted the relevant search, and thus it cannot credibly make that determination."). Federal Rule 26 and Local Rule 26.2 require the Commission to produce a privilege log. But the SEC, like any other litigant, cannot avoid its discovery obligations with mere hand waving about potential but as-of-yet unsubstantiated privileges. *See also Resolution Trust Corp. v. Diamond*, 137 F.R.D. 634, 630-41 (S.D.N.Y. 1991) ("The [deliberative process] privilege does not extend to purely factual materials even if they are used in the determination of policy. It also does not protect factual findings and conclusions, as opposed to opinions and recommendations, nor does it protect factual material which may be severed from a deliberative report." (internal citations omitted)).

IV. The SEC Should Be Required To Produce The Relevant Evidence In Its Possession.

The SEC should be required to search for and produce documents responsive to Request Nos. 4, 7, 8, 10, 11, and 14-17 – specifically, documents reflecting SEC's prior statements, and communications received by and made to third parties, as well as internal documents discussing whether XRP, bitcoin, or ether is or ever was a "security."

The Court should direct the SEC to search for such documents in:

(1) The searchable files of the following individuals: Stephanie Avakian; Elizabeth Baird; Sonia Gupta Barros; Dalia Blass; Joe Brenner; Jay Clayton; Rob Cohen; William Hinman; Jon Ingram; Kristina Littman; Jennifer McHugh; Hester Peirce; Brett Redfearn; Michael Reedich; Elad Roisman; Michael Seaman; Amy Starr; Valerie Szczepanik; and Mark Vilardo.[9]

(2) The searchable files of the Office of Investor Education.

(3) Any other reasonably-searchable database of external correspondence maintained by the SEC.

Defendants' request is reasonable, it is proportional, it is without prejudice to the SEC's ability to properly assert any applicable legal privilege (and Defendants' right to challenge such assertions), and there is no good reason for the SEC to resist this request.

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[9] Defendants reserve the right to seek the addition of further custodians whose identity is uniquely known to the SEC if such individuals are identified through further discovery.

Respectfully submitted,

/s/ Michael K. Kellogg
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June 14, 2024

By Personal Service

Gary Gensler
[redacted]

Re: *Securities and Exchange Commission* v. *Coinbase, Inc. et al.*
Case No. 23 Civ. 4738 (KPF) (S.D.N.Y.)

To Mr. Gary Gensler:

Please find enclosed a subpoena calling for the production of certain documents and electronically stored information in connection with the above-referenced proceeding.

If you have any questions or wish to discuss this matter, please contact me or my colleagues Kevin Schwartz (KSchwartz@wlrk.com) and David Webb (DPTWebb@wlrk.com).

Sincerely,

William Savitt

Enclosures:

U.S. District Court Subpoena to Produce Documents
Schedule A

AO 88B (Rev. 12/13) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of New York

Securities and Exchange Commission *Plaintiff* v. Coinbase, Inc. and Coinbase Global, Inc. *Defendant*	)	Civil Action No. 23 Civ. 4738 (KPF)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Mr. Gary Gensler (individual capacity), [redacted]

(Name of person to whom this subpoena is directed)

☑ *Production:* **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Schedule A, attached.

Place:	Date and Time:
At a location mutually agreed upon by the parties or at Torri's Legal Services, 18403 Woodfield Rd., Suite A, Gaithersburg, MD 20879	July 18, 2024 5:00 p.m. EST

❒ *Inspection of Premises:* **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: June 14, 2024

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk *Attorney's signature*

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Coinbase, Inc. and Coinbase Global, Inc., who issues or requests this subpoena, are:

William Savitt, Wachtell Lipton Rosen & Katz, 51 W. 52nd St., New York, NY 10019, WDSavitt@wlrk.com (212) 403-1000

Notice to the person who issues or requests this subpoena

A notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 23 Civ. 4738 (KPF)

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____

on *(date)* _____ .

❒ I served the subpoena by delivering a copy to the named person as follows: _____

_____

_____ on *(date)* _____ ; or

❒ I returned the subpoena unexecuted because: _____

_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of $ _____ .

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) ***For a Trial, Hearing, or Deposition.*** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) ***For Other Discovery.*** A subpoena may command:

(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) ***Claiming Privilege or Protection.***

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

SCHEDULE A

This subpoena requires the production of Documents described herein. The Requests are to be responded to in accordance with the following Definitions and Instructions.

DEFINITIONS

1. "Action" means the above-captioned civil action.

2. "Coinbase" means Coinbase, Inc., Coinbase Global, Inc., and any of their affiliates, subsidiaries, divisions, predecessors and successors, and any of their respective officers, directors, employees, agents, or attorneys.

3. "Coinbase Platform" means Coinbase's digital asset spot exchange.

4. "Coinbase Prime" means the service described in the Coinbase Prime Product Guide. *See Coinbase Prime Product Guide*, Coinbase (2022), https://tinyurl.com/mu89cran.

5. "Coinbase Staking Services" means the services offered to individual Coinbase users through the "Coinbase Earn" program.

6. "Communication" or "communications" means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise), whether orally or in writing, or by any other means or medium, between or among two or more Persons or entities including but not limited to spoken words, inquiries, discussions, conversations, conferences, interviews, negotiations, agreements, reports, meetings, correspondence, letters, electronically transmitted messages (*e.g.*, email, text messages, instant messaging), postings on Internet bulletin boards, or other forms of written, verbal or electronic intercourse, however transmitted, ESI (as defined below), and documents, as defined herein.

7. "Complaint" means the Complaint filed in the Action on June 6, 2023.

8. "Defendants" means Coinbase, Inc. and Coinbase Global, Inc.

9. "Digital Asset" means any digital asset, including any cryptocurrency, virtual currency, or other blockchain-based coin or token.

10. "Digital Asset Platform" means any exchange or other platform on which Digital Assets are offered and sold.

11. "Document" or "documents" shall have the broadest meaning permitted under the Federal Rules of Civil Procedure and shall include, without limitation, the original and all non-identical copies of any handwritten, printed, typed, recorded, or other graphic material, or ESI (as defined below), of any kind and nature, including all drafts and transcriptions thereof, however produced or reproduced, and including but not limited to accounting materials, accounts, agreements, analyses, appointment books, books of account, calendars, catalogs, checks, communications (as defined herein), computer data, computer disks, contracts, correspondence, date books, diaries, diskettes, drawings, email messages, faxes, guidelines, instructions, inter-office communications, invoices, letters, logs, manuals, memoranda, minutes, notes, opinions, payments, plans, purchase confirmations, receipts, records, regulations, reports, sound recordings, spreadsheets, statements, studies, surveys, tickets, timesheets, trade records, vouchers, word processing materials (however stored or maintained), and all other means by which information is stored for retrieval in fixed form.

12. "ESI" means information that is stored in an electronic format, regardless of the media or whether it is in the original format in which it was created, and that is retrievable in perceivable form and includes but is not limited to metadata, system data, deleted data, and fragmented data.

13. "Government Entity" means any federal, state, or foreign agency or authority, or any current or former officer, employee, or agent thereof. For the avoidance of doubt, Government Entity includes, but is not limited to, the U.S. Securities and Exchange Commission ("SEC"), U.S.

Commodity Futures Trading Commission ("CFTC"), the U.S. Department of Justice, the U.S. Department of the Treasury, the Financial Crimes Enforcement Network ("FinCEN"), the U.S. Internal Revenue Service, and the New York Department of Financial Services ("DFS").

14. "IEX Group, Inc." or "Investors' Exchange LLC" means IEX Group, Inc. or Investors' Exchange LLC, as well as any parents, subsidiaries, affiliates, predecessors, successors, assigns, members, principals, partners, directors, boards, committees, subcommittees, officers, employees, agents, representatives, consultants, attorneys, or anyone else purporting to act on their behalf.

15. "Investigation" means the investigation(s) of individuals and entities that resulted in or contributed to the filing of the Complaint, including, but not limited to, the SEC investigation captioned *In the Matter of Coinbase, Inc.* (HO-14315).

16. "Named Digital Assets" means SOL, ADA, MATIC, FIL, SAND, AXS, CHZ, FLOW, ICP, NEAR, VGX, and DASH.

17. "Named Coinbase Services" means Coinbase Prime and Coinbase's Staking Services.

18. "Person" means any natural person or individual, or any firm, partnership (general or limited), limited liability company, proprietorship, corporation, unincorporated association, trust, joint venture, or any other legal or Governmental Entity, organization, or body of any type whatsoever, as well as all agents, officers, directors, boards, committees, subcommittees, employees, consultants, representatives, or instrumentalities thereof.

19. "Prometheum, Inc." means Prometheum, Inc., Prometheum Ember ATS Inc., Prometheum Capital LLC, as well as any parents, subsidiaries, affiliates, predecessors, successors, assigns, members, principals, partners, directors, boards, committees, subcommittees, officers,

employees, agents, representatives, consultants, attorneys, or anyone else purporting to act on their behalf.

20. "Securitize, Inc.," "Securitize LLC," or "Securitize Markets, LLC" means Securitize, Inc., Securitize LLC, or Securitize Markets, LLC, as well as any parents, subsidiaries, affiliates, predecessors, successors, assigns, members, principals, partners, directors, boards, committees, subcommittees, officers, employees, agents, representatives, consultants, attorneys, or anyone else purporting to act on their behalf.

21. "SEC" means the U.S. Securities and Exchange Commission, including any Divisions, Commissioners, Commission Staff, employees, subsidiaries, or individuals or entities acting on their behalf.

22. "Staking" means the proof of stake consensus mechanism used by certain blockchain protocols to validate, verify, and secure transactions on a blockchain.

23. "Staking as a Service" means services offered to individuals to facilitate the staking of their digital assets to a blockchain with a proof-of-stake consensus mechanism.

24. The terms "concerning," "regarding," "with regard to," "relating to," and "referring to" shall be read and applied as interchangeable and shall be construed in the broadest sense permitted to mean discussing, supporting, describing, concerning, regarding, with regard to, relating to, referring to, pertaining to, containing, analyzing, evaluating, studying, recording, memorializing, reporting on, commenting on, reviewed in connection or in conjunction with, evidencing, setting forth, contradicting, refuting, considering, recommending, or constituting, in whole or in part.

25. The language of the Requests shall be read liberally, so as to be inclusive rather than exclusive, and in particular: (i) the use of the singular shall be deemed to include the plural

and vice versa, and the use of one gender shall include the other; (ii) the terms "and" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of a Request all documents that might otherwise be construed as outside its scope; (iii) the present tense includes the past and future tenses, and vice versa; (iv) the terms "any" or "all" shall mean "any and all," "each and every," and "anyone and everyone"; and (v) "include," "includes," and "including" shall mean "including but not limited to."

INSTRUCTIONS

Defendants request that you produce, wherever located, all documents described below that are in your possession, custody, or control, wherever located, regardless of whether they are possessed directly by you or any of your agents, representatives, employees, accountants, attorneys, or other persons acting or purporting to act on Your behalf.

1. Unless otherwise specified, the time period for these Requests is January 1, 2017 through the present.

2. Responsive Documents shall be produced in image format, with searchable text load files that are compatible with standard litigation support software, including Relativity, Concordance, and IPRO. The images shall be black and white, single-page, 300 DPI, Group IV .tiff images. Images for documents created with office or personal productivity software (e.g., wordprocessing documents, spreadsheets, presentations, databases, charts, and graphs) shall include tracked changes, comments, hidden rows, columns or worksheets, speakers notes, and any other similar content that can be made visible within the application. The load file shall include for each Document, the metadata fields listed below. For any Documents that have been globally de-duplicated, the custodian field shall reflect all custodians who had a copy of the Document during processing and before de-duplication. For each individual Document based on an electronic

file, the load file shall, unless such Document contains redactions, contain the path to the corresponding text that is extracted from the electronic file. Documents produced in redacted form shall contain text generated by optical character recognition ("OCR") of the redacted image(s). In addition to the foregoing, for all email, the load file shall also include, to the extent practicable, header information including: (1) the individual(s) to whom the communication was directed ("To"); (2) the author of the e-mail communication ("From"); (3) all individuals who were copied ("cc") and/or blind copied ("bcc") on the communication; (4) the subject line of the communication ("Re" or "Subject"); and (5) the date and time sent. For each Document, the load file shall also contain: (1) the beginning Bates number (referring to the first page of the Document); (2) the ending Bates number (referring to the last page of the Document); and in the case of Documents with attachments; (3) the beginning attachment range number(s); and (4) the ending attachment range number(s), where the "attachment range" records the relationship of Documents to their attachments. The attachment range should be recorded from the first page of the first Document in the attachment range, to the last page of the last Document in the attachment range. In addition, all spreadsheet, presentation, audio, and audiovisual Documents that do not require redaction shall be produced in native format with a single-page placeholder (Group IV .tiff image) indicating that the file is being produced in native format. The right to demand production of any other responsive Documents in their native format (including all metadata) is expressly reserved.

3. A Request for a document shall be deemed to include a request for all transmittal sheets, cover letters, exhibits, enclosures, attachments, or other matters affixed to the document, in addition to the document itself.

4. Each Request seeks production of each document in its entirety without abbreviations, redaction, or expurgation.

5. Responsive documents and communications are to be designated clearly so as to reflect their owner and/or custodian. Any document not produced in electronic format is to be produced in its original file folder, with all labels or similar markings intact and included, and with the name of the Person from whose file it was produced.

6. Electronically stored information, or "ESI," shall be produced in the form or forms in which it is ordinarily maintained or in a form that is reasonably usable. Specifically, where the documents responsive to a Request are stored electronically, any responsive e-mails, Word documents, and other unstructured data are to be produced in TIFF plus metadata plus extracted text format. Any responsive Excel charts, PowerPoints, databases, and other structured data are to be produced in native format. The right to demand production of any other responsive documents in their native format (including all available metadata) is expressly reserved.

7. Each Request herein requires that You produce files from all reasonably accessible sources of information in or on which You store or maintain potentially responsive documents.

8. Draft or non-identical copies are to be considered separate documents for purposes of these Requests. Any and all drafts and copies of each document that are responsive to any Request for documents shall be produced, as shall all copies of such documents that are not identical in any respect, including, but not limited to, copies containing handwritten notes, markings, stamps, or interlineations, whether or not the original of such document is within Your possession, custody, or control. The author(s) of all handwritten notes should be identified.

9. You shall construe each Request independently and not with reference to any other Request for purposes of limitation.

10. The use of the term "the" shall not be construed as limiting the scope of any Request.

11. If it is not possible to produce any document called for by a Request, or if any part of a Request is objected to, the reasons for the failure to produce the documents or the objection should be stated specifically as to all grounds. If there are no documents or communications responsive to any particular Request or subpart thereof, You shall state so in writing.

12. If You claim any form of privilege or protection or other reason as a ground for withholding from production requested documents, You shall furnish a privilege log in compliance with Federal Rule of Civil Procedure 45(e)(2) and any other parameters agreed between You and Defendants.

13. If You contend that any Request is overly broad and/or unduly burdensome, identify all aspects of the Request that are overly broad or unduly burdensome and produce the documents and communications that are not subject to this contention.

14. These Requests are continuing in nature, and any document obtained or located after the production pursuant hereto, which would have been produced had it been available or its existence known at the time, is to be supplied promptly by way of a supplemental production.

15. Defendants serve these Requests without prejudice to their right to serve additional Requests for the production of documents.

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST NO. 1.

All Documents and Communications concerning Coinbase, the Coinbase Platform, the Named Digital Assets, the Named Coinbase Services, or the subject matter of the Investigation or the Action, including all Communications with any Person or entity not party to this Action concerning the foregoing.

REQUEST NO. 2.

Documents and/or Communications sufficient to establish when you first learned of the Coinbase Platform, the Named Digital Assets, and the Named Coinbase Services, and when you first learned that each of the Named Digital Assets had been listed or was planned to be listed on the Coinbase Platform, without limitation as to the applicable time period.

REQUEST NO. 3.

All Communications with, and Documents concerning Communications with, third parties (including any Government Entity) concerning the application of federal laws, regulations, or rules (including, but not limited to, the Securities Act of 1933 and the Securities Exchange Act of 1934) to Digital Assets, Digital Asset Platforms, or Staking as a Service.

REQUEST NO. 4.

All Communications and Documents concerning any investigation by a Government Entity concerning Digital Assets, Digital Asset Platforms, or Staking as a Service.

REQUEST NO. 5.

All Communications with, and Documents concerning Communications with, the Financial Industry Regulatory Authority (FINRA) or any Government Entity, including the SEC, or the CFTC, relating to the allegations in the Complaint, the Investigation, Digital Assets, Digital Asset Platforms, or Staking as a Service.

REQUEST NO. 6.

All Communications with, and Documents concerning Communications with, journalists or other employees or affiliates of news or media organizations concerning Coinbase, this Action, the Investigation, Digital Assets, Digital Asset Platforms, or Staking as a Service.

REQUEST NO. 7.

All Communications with, and Documents concerning Communications with, any alleged developers of, alleged issuers of, or Persons otherwise affiliated with any Digital Assets or their associated blockchain networks, including any Documents or information provided to you by any alleged developers of, alleged issuers of, or Persons otherwise affiliated with any Digital Assets, their affiliated blockchain networks, or their counsel.

REQUEST NO. 8.

All Documents and Communications concerning any discussions, instructions, advice, inquiries or other Communications between you and any Person concerning that Person's actual, planned, or potential business or other relationship with Coinbase or with a developer of or Person otherwise affiliated with Digital Assets, Digital Asset Platforms, or Staking as a Service.

REQUEST NO. 9.

All Communications with, and Documents concerning Communications with, Prometheum, Inc., Martin Kaplan, Aaron Kaplan, or Benjamin Kaplan; Securitize, Inc.; Securitize LLC; or Securitize Markets, LLC.

REQUEST NO. 10.

All Communications with, and Documents concerning Communications with, IEX Group, Inc. or Investors' Exchange LLC concerning Coinbase, Digital Assets, or Digital Asset Platforms.

REQUEST NO. 11.

All Communications with, and Documents concerning Communications with, any Person

concerning (i) any actual, planned, or potential registration by that Person as an exchange, broker, dealer, clearing agency, alternative trading system, or custodian that would or could facilitate the offer, sale, or custody of Digital Assets or any product or service relating to Digital Assets, including but not limited to the means or viability of such registration; or (ii) the registration with the SEC of any exchange-traded product that holds or references Digital Assets.

REQUEST NO. 12.

All Documents and Communications concerning (i) *Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO*, Exchange Act Release No. 81207 (July 25, 2017), (ii) the June 14, 2018 speech by former SEC Director of the Division of Corporation Finance William Hinman titled "Digital Asset Transactions: When Howey Met Gary (Plastic)" ("Hinman Speech"), or (iii) FinHub's April 2019 "Framework for 'Investment Contract' Analysis of Digital Assets."

REQUEST NO. 13.

All Documents and Communications concerning any public statements by FINRA or any Government Agency, including but not limited to the SEC and CFTC, concerning Digital Assets, Digital Asset Platforms, Staking, or Staking as a Service.

REQUEST NO. 14.

All Documents and Communications concerning whether Digital Assets or transactions in Digital Assets are "investment contract[s]" within the meaning of the Securities Act of 1933 or the Securities Exchange Act of 1934, including Documents and Communications concerning the application of *SEC* v. *W.J. Howey Co.*, 328 U.S. 293 (1946), to Digital Assets or transactions in Digital Assets.

REQUEST NO. 15.

All Documents and Communications concerning (i) the role of a Digital Asset's

ecosystem in the application of the federal securities laws, including but not limited to determining whether transactions in an asset constitute transactions in investment contracts or other securities or (ii) the ecosystems of the Named Digital Assets, including, but not limited to, the components of such ecosystems, the identities of the alleged developers, issuers, and promoters affiliated with such ecosystems.

REQUEST NO. 16.

All Documents and Communications relating to the SEC's assertion during Oral Argument that when someone "purchases tokens like [the Named Digital Assets], like these 13 examples . . . they are investing into the network behind it"—that is, "the ecosystem." *See* Jan. 17, 2024 Hr'g Tr. at 21:20-22:5; *see also id.* at 57:17-21.

REQUEST NO. 17.

All Documents and Communications relating to Bitcoin's ecosystem or lack thereof.

REQUEST NO. 18.

All Documents and Communications concerning the size, value, growth, or importance of the Digital Asset industry or Digital Asset Platforms.

REQUEST NO. 19.

All Documents and Communications concerning potential or proposed legislation relating to the regulatory and/or enforcement authorities of the SEC and/or another Government Entity with respect to Digital Assets or Digital Asset Platforms.

REQUEST NO. 20.

All Documents and Communications concerning any meeting or call involving one or more Commissioner concerning Coinbase, the Coinbase Platform or any of the Named Digital Assets or Named Coinbase Services, including a list of the attendees of any such meeting or call.

REQUEST NO. 21.

All Documents and Communications concerning the following litigation matters:

a. *SEC* v. *Kik Interactive Inc.*, Case No. 19-cv-5244 (S.D.N.Y.);

b. *SEC* v. *Telegram Grp. Inc. and TON Issuer Inc.*, Case No. 19-cv-9439 (S.D.N.Y.);

c. *SEC* v. *Ripple Labs, Inc. et al.*, Case No. 20-cv-10832 (S.D.N.Y.);

d. *SEC* v. *LBRY, Inc.*, Case No. 21-cv-260 (D.N.H.);

e. *SEC* v. *Wahi et al.*, Case No. 2:22-cv-1009 (W.D. Wash.);

f. *SEC* v. *Binance Holdings Ltd. et al.*, Case No. 23-cv-1599 (D.D.C.);

g. *SEC* v. *Bittrex, Inc. et al.*, Case No. 23-cv-580 (W.D. Wash.);

h. *SEC* v. *Genesis Global Capital, LLC and Gemini Tr. Co., LLC*, Case No. 23-cv-287 (S.D.N.Y.);

i. *SEC* v. *Terraform Labs PTE Ltd. and Kwon*, Case No. 23-cv-1346 (S.D.N.Y.);

j. *SEC* v. *Payward, Inc. and Payward Ventures, Inc.*, Case No. 23-cv-6003 (N.D. Cal.); and

k. *SEC* v. *Payward Ventures, Inc. (D/B/A Kraken) and Payward Trading, Ltd. (D/B/A Kraken)*, Case No. 23-cv-588 (N.D. Cal.).

REQUEST NO. 22.

All Documents and Communications concerning Coinbase's direct public offering or registration statement on Form S-1 (including any drafts of such registration statement), including but not limited to Documents and Communications concerning the application or potential application of the federal securities laws to Coinbase's business or operations.

REQUEST NO. 23.

All Documents and Communications concerning your public remarks about Digital Assets, Digital Asset Platforms, and Staking as a Service, without limitation as to the applicable time period, including but not limited to:

a. Your May 6, 2021 testimony before the United States House Committee on Financial Services;

b. Your May 7, 2021 appearance on CNBC;

c. Your May 26, 2021 testimony before the United States House Subcommittee on Financial Services and General Government;

d. Your August 3, 2021 remarks before the Aspen Security Forum;

e. Your September 21, 2021 interview with the *Washington Post*;

f. Your October 5, 2021 testimony before the United States House Committee on Financial Services;

g. Your August 19, 2022 opinion piece published by the *Wall Street Journal*, titled "The SEC Treats Crypto Like the Rest of the Capital Markets";

h. Your December 7, 2022 interview with Yahoo! Finance;

i. Your interview with Ankush Khardori, as reported in Intelligencer's February 23, 2023 article, "Can Gary Gensler Survive Crypto Winter? D.C.'s Top Financial Cop on Bankman-Fried Blowback";

j. Your interview with CNBC's *Squawk Box*, as reported in CNBC's February 10, 2023 article, "SEC's Gary Gensler on Kraken Staking Settlement: Other Crypto Platforms Should take Note of This";

k. Your March 29, 2023 testimony before the United States House Appropriations Subcommittee on Financial Services and General Government;

l. Your statements regarding Digital Assets during "Office Hours with Gary Gensler" including but not limited to the episodes from August 16, 2021, July 28, 2022, August 4, 2022, October 3, 2022, February 9, 2023, and April 27, 2023;

m. Your April 18, 2023 testimony before the United States House Committee on Financial Services;

n. Your interview with CNBC's *Squawk Box*, as reported in CNBC's June 6, 2023 article, "SEC Chair Gensler doubts the need for more digital currency";

o. Your interview with the *Wall Street Journal*, as reported in the June 8, 2023 article, "SEC's Gary Gensler Had Crypto in His Sights for Years. Now He's Suing Binance and Coinbase.";

p. Your June 8, 2023 remarks before the Piper Sandler Global Exchange & Fintech Conference;

q. Your interview with the *Wall Street Journal*, as broadcast in the June 14, 2023 podcast episode, "SEC Chair Gary Gensler on His Crypto Crackdown";

r. Your September 12, 2023 testimony before the United States Senate Committee on Banking, Housing, and Urban Affairs;

s. Your September 27, 2023 testimony before the United States House Committee on Financial Services; and

t. Your statements concerning Digital Assets or Digital Asset Platforms made prior to your tenure as SEC Chair.

REQUEST NO. 24.

All Documents and Communications concerning the Petition for Rulemaking submitted by Coinbase on July 21, 2022, any comment letters submitted by Coinbase concerning its Petition for Rulemaking, or the Commission's Order denying Coinbase's Petition for Rulemaking issued on December 15, 2023, including any Communications with any third parties (including any Government Entity) concerning Coinbase's Petition for Rulemaking or the Commission's Order.

REQUEST NO. 25.

All Documents and Communications concerning the comment letter sent to Coinbase Global, Inc. by the Commission dated September 22, 2023 regarding Coinbase Global, Inc.'s Form 10-K for the year ended December 31, 2022, Form 10-Q for the period ended June 30, 2023, Form 8-K filed January 10, 2023, and Form 8-K filed May 4, 2023 (File No. 001-40289) and any subsequent correspondence relating thereto.

REQUEST NO. 26.

All Documents and Communications concerning your purchase, use, ownership, or trading of Digital Assets or use of Digital Asset Platforms.

REQUEST NO. 27.

All Documents and Communications concerning your courses "FinTech: Shaping the Financial World" and "Blockchain and Money," including but not limited to syllabi, speaking

notes, presentations, distributed materials, assignments, and any classroom recordings.

REQUEST NO. 28.

All Documents and Communications concerning your work with the Massachusetts Institute of Technology's Digital Currency Initiative, including any speeches, publications, or reports concerning Digital Assets, Digital Asset Platforms, Staking, or Staking as a Service.

Dated: June 14, 2024
New York, New York

WACHTELL, LIPTON, ROSEN & KATZ

/s/ William Savitt

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EXHIBIT G

Speech

Remarks Before the Aspen Security Forum

Chair Gary Gensler

Washington D.C.

Aug. 3, 2021

Thank you for that kind introduction. It's good to join the Aspen Security Forum.

As is customary, I'd like to note that my views are my own, and I'm not speaking on behalf of the Commission or the SEC staff.

Some might wonder: What does the SEC have to do with crypto?

Further, why did an organization like the Aspen Security Forum ask me to speak about crypto's intersection with national security?

Let me start at the beginning.

It was Halloween night 2008, in the middle of the financial crisis, when Satoshi Nakamoto published an eight-page paper[1] on a cypherpunk mailing list that'd been run by cryptographers since 1992.[2]

Nakamoto — we still don't know who she, he, or they were — wrote, "I've been working on a new electronic cash system that's fully peer-to-peer, with no trusted third party."[3]

Nakamoto had solved two riddles that had dogged these cryptographers and other technology experts for a couple of decades: first, how to move something of value on the internet without a central intermediary; and relatedly, how to prevent the "double-spending" of that valuable digital token.

Subsequently, his innovation spurred the development of crypto assets and the underlying blockchain technology.

Based upon Nakamoto's innovation, about a dozen years later, the crypto asset class has ballooned. As of Monday, this asset class purportedly is worth about $1.6 trillion, with 77 tokens worth at least $1 billion each and 1,600 with at least a $1 million market capitalization.[4]

Before starting at the SEC, I had the honor of researching, writing, and teaching about the intersection of finance and technology at the Massachusetts Institute of Technology. This included courses on crypto finance, blockchain technology, and money.

In that work, I came to believe that, though there was a lot of hype masquerading as reality in the crypto field, Nakamoto's innovation is real. Further, it has been and could continue to be a catalyst for change in the fields of finance and money.[5]

At its core, Nakamoto was trying to create a private form of money with no central intermediary, such as a central bank or commercial banks.

We already live in an age of digital public monies — the dollar, euro, sterling, yen, yuan. If that wasn't obvious before the pandemic, it has become eminently clear over the last year that we increasingly transact online.

Such public fiat monies fulfill the three functions of money: a store of value, unit of account, and medium of exchange.

No single crypto asset, though, broadly fulfills all the functions of money.

Primarily, crypto assets provide digital, scarce vehicles for speculative investment. Thus, in that sense, one can say they are highly speculative stores of value.

These assets haven't been used much as a unit of account.

We also haven't seen crypto used much as a medium of exchange. To the extent that it is used as such, it's often to skirt our laws with respect to anti-money laundering, sanctions, and tax collection. It also can enable extortion via ransomware, as we recently saw with Colonial Pipeline.

With the advent of the internet age and the movement from physical money to digital money several decades ago, nations around the globe layered various public policy goals over our digital public money system.

As a policy matter, I'm technology-neutral.

As a personal matter, I wouldn't have gone to MIT if I weren't interested in how technology can expand access to finance and contribute to economic growth.

But I am anything but public policy-neutral. As new technologies come along, we need to be sure we're achieving our core public policy goals.

In finance, that's about protecting investors and consumers, guarding against illicit activity, and ensuring financial stability.

So how does the SEC fit into all this?

The SEC has a three-part mission — to protect investors, facilitate capital formation, and maintain fair, orderly, and efficient markets in between them. We focus on financial stability as well. But at our core, we're about investor protection.

If you want to invest in a digital, scarce, speculative store of value, that's fine. Good-faith actors have been speculating on the value of gold and silver for thousands of years.

Right now, we just don't have enough investor protection in crypto. Frankly, at this time, it's more like the Wild West.

This asset class is rife with fraud, scams, and abuse in certain applications. There's a great deal of hype and spin about how crypto assets work. In many cases, investors aren't able to get rigorous, balanced, and complete information.

If we don't address these issues, I worry a lot of people will be hurt.

First, many of these tokens are offered and sold as securities.

There's actually a lot of clarity on that front. In the 1930s, Congress established the definition of a security, which included about 20 items, like stock, bonds, and notes. One of the items is an investment contract.

The following decade, the Supreme Court took up the definition of an investment contract. This case said an investment contract exists when "a person invests his money in a common enterprise and is led to expect profits

solely from the efforts of the promoter or a third party."[6] The Supreme Court has repeatedly reaffirmed this Howey Test.

Further, this is but one of many ways we determine whether tokens must comply with the federal securities laws.

I think former SEC Chairman Jay Clayton said it well when he testified in 2018: "To the extent that digital assets like [initial coin offerings, or ICOs] are securities — and I believe every ICO I have seen is a security — we have jurisdiction, and our federal securities laws apply."[7]

I find myself agreeing with Chairman Clayton. You see, generally, folks buying these tokens are anticipating profits, and there's a small group of entrepreneurs and technologists standing up and nurturing the projects. I believe we have a crypto market now where many tokens may be unregistered securities, without required disclosures or market oversight.

This leaves prices open to manipulation. This leaves investors vulnerable.

Over the years, the SEC has brought dozens of actions in this area,[8] prioritizing token-related cases involving fraud or other significant harm to investors. We haven't yet lost a case.

Moreover, there are initiatives by a number of platforms to offer crypto tokens or other products that are priced off of the value of securities and operate like derivatives.

Make no mistake: It doesn't matter whether it's a stock token, a stable value token backed by securities, or any other virtual product that provides synthetic exposure to underlying securities. These products are subject to the securities laws and must work within our securities regime.

I've urged staff to continue to protect investors in the case of unregistered sales of securities.

Next, I'd like to discuss crypto trading platforms, lending platforms, and other "decentralized finance" (DeFi) platforms.

The world of crypto finance now has platforms where people can trade tokens and other venues where people can lend tokens. I believe these platforms not only can implicate the securities laws; some platforms also can implicate the commodities laws and the banking laws.

A typical trading platform has more than 50 tokens on it. In fact, many have well in excess of 100 tokens. While each token's legal status depends on its own facts and circumstances, the probability is quite remote that, with 50 or 100 tokens, any given platform has zero securities.

Moreover, unlike other trading markets, where investors go through an intermediary like the New York Stock Exchange, people can trade on crypto trading platforms without a broker — 24 hours a day, 7 days a week, from around the globe.

Further, while many overseas platforms state they don't allow U.S. investors, there are allegations that some unregulated foreign exchanges facilitate trading by U.S. traders who are using virtual private networks, or VPNs.[9]

The American public is buying, selling, and lending crypto on these trading, lending, and DeFi platforms, and there are significant gaps in investor protection.

Make no mistake: To the extent that there are securities on these trading platforms, under our laws they have to register with the Commission unless they meet an exemption.

Make no mistake: If a lending platform is offering securities, it also falls into SEC jurisdiction.

Next, I'd like to turn to stable value coins, which are crypto tokens pegged or linked to the value of fiat currencies.

Many of you have heard about Facebook's efforts to stand up a stablecoin called Diem (formerly known as Libra).

Due to the global reach of Facebook's platform, this has gotten a lot of attention from central bankers and regulators. This is not only due to general policies and concerns with crypto, but also due to Diem's potential impact on monetary policy, banking policy, and financial stability.

Maybe less well known to this audience, though, is that we already have an existing stablecoin market worth $113 billion,[10] including four large stablecoins — some of which have been around for seven years.

These stablecoins are embedded in crypto trading and lending platforms.

How do you trade crypto-to-crypto? Usually, somebody uses stablecoins.

In July, nearly three-quarters of trading on all crypto trading platforms occurred between a stablecoin and some other token.[11]

Thus, the use of stablecoins on these platforms may facilitate those seeking to sidestep a host of public policy goals connected to our traditional banking and financial system: anti-money laundering, tax compliance, sanctions, and the like. This affects our national security, too.

Further, these stablecoins also may be securities and investment companies. To the extent they are, we will apply the full investor protections of the Investment Company Act and the other federal securities laws to these products.

I look forward to working with my colleagues on the President's Working Group on Financial Markets on these matters.[12]

Next, I want to turn to investment vehicles providing exposure to crypto assets. Such investment vehicles already exist, with the largest among them having been around for eight years and worth more than $20 billion.[13] Also, there are a number of mutual funds that invest in Bitcoin futures on the Chicago Mercantile Exchange (CME).

I anticipate that there will be filings with regard to exchange-traded funds (ETFs) under the Investment Company Act ('40 Act). When combined with the other federal securities laws, the '40 Act provides significant investor protections.

Given these important protections, I look forward to the staff's review of such filings, particularly if those are limited to these CME-traded Bitcoin futures.

The final policy area has to do with custody of crypto assets. The SEC is seeking comment on crypto custody arrangements by broker-dealers and relating to investment advisers.[14] Custody protections are key to preventing theft of investor assets, and we will be looking to maximize regulatory protections in this area.

Before I conclude, I'd like to note we have taken and will continue to take our authorities as far as they go.

Certain rules related to crypto assets are well-settled. The test to determine whether a crypto asset is a security is clear.

There are some gaps in this space, though: We need additional Congressional authorities to prevent transactions, products, and platforms from falling between regulatory cracks. We also need more resources to protect investors in this growing and volatile sector.

We stand ready to work closely with Congress, the Administration, our fellow regulators, and our partners around the world to close some of these gaps.

In my view, the legislative priority should center on crypto trading, lending, and DeFi platforms. Regulators would benefit from additional plenary authority to write rules for and attach guardrails to crypto trading and lending.

Right now, large parts of the field of crypto are sitting astride of — not operating within — regulatory frameworks that protect investors and consumers, guard against illicit activity, ensure for financial stability, and yes, protect national security.

Standing astride isn't a sustainable place to be. For those who want to encourage innovations in crypto, I'd like to note that financial innovations throughout history don't long thrive outside of our public policy frameworks.

At the heart of finance is trust. And at the heart of trust in markets is investor protection. If this field is going to continue, or reach any of its potential to be a catalyst for change, we better bring it into public policy frameworks.

Thank you. I look forward to your questions.

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[1] *See* Satoshi Nakamoto, "Bitcoin: A Peer-to-Peer Electronic Cash System," *available at* https://bitcoin.org/bitcoin.pdf.

[2] *See* Haseeb Qureshi "The Cypherpunks" (Dec. 29, 2019), *available at* https://nakamoto.com/the-cypherpunks/.

[3] *See* "Bitcoin P2P e-cash paper" (Oct. 31, 2008), *available at* https://satoshi.nakamotoinstitute.org/emails/cryptography/1/.

[4] Numbers as of Aug. 2, 2021. *See* CoinMarketCap, *available at* www.coinmarketcap.com. Crypto asset figures are not audited or reported to regulatory authorities.

[5] *See* Michael Casey, Jonah Crane, Gary Gensler, Simon Johnson, and Neha Narula, "The Impact of Blockchain Technology on Finance: A Catalyst for Change" (2018), *available at* https://www.sipotra.it/wp-content/uploads/2018/07/The-Impact-of-Blockchain-Technology-on-Finance-A-Catalyst-for-Change.pdf.

[6] *See* SEC v. Howey Co., 328 U.S. 293 (1946), "Framework for 'Investment Contract' Analysis of Digital Assets," *available at* https://supreme.justia.com/cases/federal/us/328/293/.

[7] *See* Jay Clayton, Testimony United States Senate Committee on Banking, Housing, And Urban Affairs, "Virtual Currencies: The Oversight Role of the U.S. Securities and Exchange Commission and the U.S. Commodity Futures Trading Commission" (Feb. 6, 2018), *available at* https://www.banking.senate.gov/hearings/virtual-currencies-the-oversight-role-of-the-us-securities-and-exchange-commission-and-the-us-commodity-futures-trading-commission (see approx. 32:00 mark).

[8] *See* Cornerstone Research, "Cornerstone Research Report Shows SEC Establishes Itself as a Key U.S. Cryptocurrency Regulator" (May 11, 2021), *available at* https://www.cornerstone.com/Publications/Press-Releases/Cornerstone-Research-Report-Shows-SEC-Establishes-Itself-as-a-Key-U-S-Cryptocurrency-Regulator.

[9] *See* Alexander Osipovich, "U.S. Crypto Traders Evade Offshore Exchange Bans" (July 30, 2021), *available at* https://www.wsj.com/articles/u-s-crypto-traders-evade-offshore-exchange-bans-11627637401.

[10] Numbers as of Aug. 1. *See* The Block, "Total Stablecoin Supply," *available at* https://www.theblockcrypto.com/data/decentralized-finance/stablecoins.

[11] *See* The Block, "Share of Trade Volume by Pair Denomination," *available at* https://www.theblockcrypto.com/data/crypto-markets/spot.

[12] *See* "Readout of the Meeting of the President's Working Group on Financial Markets to Discuss Stablecoins" (July 19, 2021), *available at* https://home.treasury.gov/news/press-releases/jy0281.

[13] *See* Grayscale® Bitcoin Trust, *available at* https://grayscale.com/products/grayscale-bitcoin-trust/.

[14] *See* Securities and Exchange Commission, "Staff Statement on WY Division of Banking's 'NAL on Custody of Digital Assets and Qualified Custodian Status'" (Nov. 9, 2020), *available at* https://www.sec.gov/news/public-statement/statement-im-finhub-wyoming-nal-custody-digital-assets. *See* Securities and Exchange Commission, "SEC Issues Statement and Requests Comment Regarding the Custody of Digital Asset Securities by Special Purpose Broker-Dealers" (Dec. 23, 2020), *available at* https://www.sec.gov/news/press-release/2020-340.

EXHIBIT H

U.S. Securities and Exchange Commission

Request Form for FinTech-Related Meetings and Other Assistance

We welcome requests for meetings and other assistance relating to FinTech issues arising under the federal securities laws.

Please use the form below to request a meeting or assistance from SEC staff.

Important Notes before completing this form:

- For assistance in completing this form, please refer to General Instructions below.
- Please read our Privacy Act Notice (http://www.sec.gov/privacy.htm) to learn about how we may use the information you send to us.
- To request confidential treatment of a submission, please follow the procedure detailed here (/FOIA/conftreat.htm).
- Do not use this form to file a complaint or tip concerning potential securities law violations. If you wish to file a complaint or a tip, click here for the SEC Center for Complaints and Enforcement Tips (https://www.sec.gov/tcr).
- Alternatively, you have the option to print this form and send it by mail to:
  FinHub

U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

- Do not use this form to apply for jobs at the SEC. If you wish to learn more and how to apply for opportunities, please visit USA Jobs (https://sec.usajobs.gov/).

Fields marked with an asterisk (*) are required.

Information About You

Name *

Email Address *

Phone Number *

Best time of day (Eastern US time) to reach you by phone

- None -

The staff will attempt to call you during the time of day you select.

Information About Your Meeting Request

General Subject Matter of Your Request*

Please select at least one of the listed options below for the general subject matter of your meeting request.
To select multiple options, hold down the (CTRL - PC) or (Command - Mac) key

Automated Investment Tools / Robo-Advisers
Crypto Assets / Digital Assets
Crypto Asset / Digital Asset Trading Platforms
Digital Marketplace Financing
Funding Portals

Purpose of the Requested Meeting*

Please select at least one of the listed options below for the purpose of your meeting request.
To select multiple options, hold down the (CTRL - PC) or (Command - Mac) key

Custody Inquiry
Determination of Instrument as a "Security"
Funding Portal Registration
Intermediary Registration
Securities Registration

Your Request *

Please state, in reasonable detail, your request for a meeting or other assistance.
DO NOT *provide* any sensitive personally identifiable information (PII) on this form. Examples of PII include social security number (SSN) and date of birth (DOB).

Additional Information

You may provide any other information that is relevant to your meeting request. For example, you may include the factual background and results of research you conducted, including references to your sources. You may also include any other pertinent information you believe will help the staff respond to your meeting request.
DO NOT *provide* any sensitive personally identifiable information (PII) on this form. Examples of PII include social security number (SSN) and date of birth (DOB).

Upload Any Additional Information

You may provide any documents or other materials that are relevant to your meeting request, such as white papers, presentations, screen shots or offering materials. Please do not send executable files or zip files. This form will only accept PDF, Word, Excel, Powerpoint, JPG and PNG file attachments. File attachments are limited to attachments of 20MB in the aggregate.

DO NOT *attach documents* containing any sensitive personally identifiable information (PII) on this form. Examples of PII include social security number (SSN) and date of birth (DOB).

Upload Files

Select doc docx jpg jpeg pdf png ppt pptx xls xlsx files

Drag files here or choose from folder

Maximum 5 files.
20 MB limit.
Allowed types: doc, docx, jpg, jpeg, pdf, png, ppt, pptx, xls, xlsx.

General Instructions for the Use of This Form

Answers to many questions are available on this website. Before you contact FinHub, please visit "Crypto Assets | Investor.gov (https://www.investor.gov/additional-resources/spotlight/crypto-assets)" and the materials linked from that page, which answer some of the most common questions we receive regarding crypto assets/digital assets. For assistance conducting research on this website, see Researching the Federal Securities Laws through

the SEC Website (https://www.sec.gov/investor/pubs/securitieslaws.htm). Also note that some resources for conducting research are available through the Division of Corporation Finance home page (https://www.sec.gov/divisions/corpfin.shtml), Division of Examinations home page (https://www.sec.gov/exams), Division of Investment Management home page (https://www.sec.gov/investment), and the Division of Trading and Markets home page (https://www.sec.gov/page/tmsectionlanding).

You may include results of legal research with your request. If you are an attorney or accountant submitting a meeting request related to an interpretive matter, we request that you research all available authority before contacting us. You may include the results of your research with your question, as well as your views on the question and the basis for those views.

Please submit only one request concerning your issue. Do not also call the Division or Office to make your meeting request. We will direct your request to the appropriate Division or Office for you. Please wait for a staff member to contact you about your questions before providing additional information.

CAPTCHA *

I'm not a robot

Warning: Extraneous information may be read while using a screen reader on the RECAPTCHA below.

SUBMIT RESET

EXHIBIT I

Exhibit 217

PAUL HASTINGS

CONFIDENTIAL TREATMENT REQUESTED
BY DASH CORE GROUP, INC.
UNDER 17 C.F.R. §200.83
DASH-001

October 31, 2018

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Office of Chief Counsel
Division of Markets and Trading
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Dash Virtual Currency

Dear Sir or Madam:

On October 4, 2018, representatives of our client Dash Core Group, Inc. ("DCG") and we met with members of the Staff of the Division of Corporation Finance and the Division of Markets and Trading to discuss our draft letter dated August 30, 2018 requesting no action relief (the "Draft Request") in respect of Dash, a virtual currency, on the basis outlined therein. At such meeting, the Staff requested that we provide a supplemental memorandum analyzing Dash within the rubric of the factors outlined by William Hinman, Director of the Division of Corporation Finance, in his speech titled "Digital Asset Transactions: When Howey Met Gary (Plastic)," dated June 14, 2018. This letter sets forth our analysis.

For ease of reference, each of the factors identified in Director Hinman's speech is reproduced below in bold text with our responses immediately following.

1. **Is there a person or group that has sponsored or promoted the creation and sale of the digital asset, the efforts of whom play a significant role in the development and maintenance of the asset and its potential increase in value?**

   The Dash network (the "Network") is decentralized and has been since inception. Dash and the Network initially were developed by a small group of individuals led by Evan Duffield, but these individuals' efforts were relatively quickly replaced by efforts of a much larger decentralized community of persons interested in promoting Dash as a superior virtual currency. DCG is not aware of any of the initial developers continuing to play a significant role in further development or maintenance of the Network.

   As explained in greater detail in the Draft Request, the Network consists of thousands of nodes that validate transactions which are processed by "miners." Certain nodes known as "masternodes" perform specialized functions on the Network, including processing InstantSend transactions (which allow users to receive confirmation of their transaction within seconds) and PrivateSend transactions (which provide enhanced privacy). In exchange for their contributions to the Network, miners and masternodes share "block rewards," which are sums of newly created Dash, and transaction fees. All Dash in existence has been created via the issuance of block rewards and Dash Treasury Funds (discussed below) after the Network was operational. The Network has never sold Dash.

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DASH-002

In addition to performing specialized functions for the Network, masternodes also serve a governance function in the Network by voting on Network proposals. Each month, 10% of the amount of aggregate block rewards is allocated to "Dash Treasury Funds," which are used to fund projects and activities that serve the needs of the Network, including supporting further development of the Network and promoting the use of Dash. Anyone can submit a proposal for such a project for a fee of five Dash (Dash paid as proposal submission fees are destroyed). The decision to approve a specific proposal is determined by a vote of the masternode operators. Assuming there are sufficient Dash Treasury Funds to fund a particular proposal, if the number of votes in favor of such proposal exceeds the number of votes against a proposal by a margin of at least 10% of the total number of masternodes, the Network automatically creates and allocates the requested amount of Dash Treasury Funds contemplated by the proposal.[1]

Numerous organizations, groups and individuals, including DCG, regularly submit proposals for Dash Treasury Funds to fund their activities in support of the Network. DCG provides software development, marketing, advocacy and business development services to advance the interests of the Network. However, there are other organizations, groups and individuals who regularly submit proposals for and receive Dash Treasury Funds to provide these types of services to the Network. Masternode operators determine which proposals to fund.

2. **Has this person or group retained a stake or other interest in the digital asset such that it would be motivated to expend efforts to cause an increase in value in the digital asset? Would purchasers reasonably believe such efforts will be undertaken and may result in a return on their investment in the digital asset?**

As architected, there never was a "developers' fund" or other reserve of Dash that was allocated to the developers of the Network. Any Dash possessed by early developers of the Network was acquired through mining (in which case, their mining activities competed with those of other miners) or as Dash Treasury Funds or purchased on the secondary market.

Similarly, organizations, groups and individuals who "support" the Network today do so by processing transactions (and are rewarded with block rewards) or performing services to benefit the Network pursuant to proposals submitted to and approved by the masternode operators. For example, DCG submits proposals to cover its operating expenses, including compensation to employees, contractors and other service providers, rent and other overhead expenses. DCG spends nearly all of the Dash it receives on a monthly basis; any balance is maintained for working capital purposes (e.g., to pay operating expenses in months during which such expenses exceed the Dash Treasury Funds received by DCG).

Dash Treasury Funds can fund proposals that promote Dash or improve the functionality of the Network, which may lead to an increase in Dash's value due to demand and other market factors. However, there is no assurance that any proposal for Dash Treasury Funds will be approved or that parties who provide services to the Network will continue to do so.

[1] From time to time, proposals are submitted that seek input from the masternode operators regarding significant strategic decisions relating to the Network rather than requesting allocation of Dash Treasury Funds. The subject matter of past "decision proposals" has included increasing the transaction block size, changing the Dash logo, and reducing the proposal submission fee.

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3. **Has the promoter raised an amount of funds in excess of what may be needed to establish a functional network, and, if so, has it indicated how those funds may be used to support the value of the tokens or to increase the value of the enterprise? Does the promoter continue to expend funds from proceeds or operations to enhance the functionality and/or value of the system within which the tokens operate?**

   The Network did not conduct an "ICO" or any other form of token sale. No Dash were ever sold by the Network or any founder to fund development of the Network. All Dash in circulation were created after the Network became operational in January 2014 as a result of mining, in the form of block rewards and Dash Treasury Funds.

4. **Are purchasers "investing," that is seeking a return? In that regard, is the instrument marketed and sold to the general public instead of to potential users of the network for a price that reasonably correlates with the market value of the good or service in the network?**

   Dash generally is promoted as a superior form of virtual currency and not for its investment potential. When used in commercial transactions, Dash functions as a medium of exchange. Dash is accepted by over 3,900 merchants around the world.[2] It can be used to pay for food, clothing, utilities, mobile service, travel and many other goods and services.[3] Dash users completed around 979,000 transactions using Dash in the second quarter of 2018.[4]

   We note that, due to the decentralized nature of the Network, no particular person or entity controls the marketing of Dash. From time to time, the Network approves proposals submitted by third parties, including DCG, to promote the benefits of Dash. DCG has tended to focus on Dash's utility and unique features in its own marketing efforts and has discouraged other marketers of Dash from characterizing Dash as an investment opportunity or emphasizing the potential for profit.

   Dash can only be acquired through mining, operating a masternode, through an approved proposal for Dash Treasury Funds or in the secondary market. When acquired on the secondary market, the parties to the transaction determine the price at which Dash is sold.

5. **Does application of the Securities Act protections make sense? Is there a person or entity others are relying on that plays a key role in the profit-making of the enterprise such that disclosure of their activities and plans would be important to investors? Do informational asymmetries exist between the promoters and potential purchasers/investors in the digital asset?**

   Characterization of Dash as a "security" under the Securities Act makes no sense and would be a substantial impediment to Dash achieving widespread use as a virtual currency. In no way does a holder, in receiving Dash through mining or Dash Treasury Funds or in purchasing Dash in the secondary market, invest in any profit-making enterprise managed by any identified dedicated group of individuals or entities.

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[2] *See Welcome To Discover Dash Online Business Directory,* https://discoverdash.com (last visited Oct. 29, 2018).
[3] *Id.*
[4] *See Dash Transactions hist. chart,* BitInfoCharts, https://bitinfocharts.com/comparison/dash-transactions.html (last visited Oct. 30, 2018).

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The Network as the creator of Dash does not generate revenues or profits that are paid as financial return to holders of Dash. Moreover, there are no managers or promoters of Dash who solicit funds from purchasers or upon whose performance the value of Dash is dependent. As described in detail in the Draft Request, the Network relies on many third parties to perform functions that might typically be carried out by promoters or managers. In exchange for Dash paid from the Network (in the form of block rewards and Dash Treasury Funds), these third parties provide services that enhance the Network, such as transaction processing (provided by miners), Network security and functionality (supported by masternodes), and software development and marketing (provided by third parties like DCG). However, these services are funded only as a result of mining and only if proposals for such services are approved by the masternodes. Ultimately, the masternodes (of which there are currently approximately 4,900[5]) collectively choose how to allocate Dash Treasury Funds.

Information about Dash and the Network is publicly available to anyone with internet access. The Network's code can be viewed on github.com.[6] All proposals for Dash Treasury Funds and the results of voting on such proposals are publicly viewable.[7] Many of the organizations, groups and individuals who receive Dash Treasury Funds share periodic updates on their activities and the progress of specific projects funded by Dash Treasury Funds with the Dash community in public online forums.[8]

6. **Do persons or entities other than the promoter exercise governance rights or meaningful influence?**

Because there is no central authority or single or core group of promoters of Dash, governance and influence over Dash and the Network resides with users that contribute resources to the Network. Miners influence the Network in a similar fashion to Bitcoin, in which a critical mass of users must support a new Network version or feature for such version or feature to be implemented successfully. Masternodes participate in Network governance in the same way as miners and also by voting on proposals, thereby determining who receives Dash Treasury Funds from the Network.

7. **Is token creation commensurate with meeting the needs of users or, rather, with feeding speculation?**

All Dash in circulation were created after the Network became operational in January 2014, as a result of mining in the form of block rewards and Dash Treasury Funds. No Dash have ever been sold by the Network.

8. **Are independent actors setting the price or is the promoter supporting the secondary market for the asset or otherwise influencing trading?**

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[5] *Home*, Dash Central, https://www.dashcentral.org/ (last visited Oct. 30, 2018).
[6] *See dashpay/dash*, GitHub, https://github.com/dashpay/dash (last visited Oct. 30, 2018).
[7] *See Budget*, Dash Central, https://www.dashcentral.org/budget (last visited Oct. 30, 2018).
[8] *See Welcome to the Dash Forum*, https://www.dash.org/forum/ (last visited Oct. 30, 2018). For example, DCG holds quarterly webcasts to update the Dash community on progress of projects it has undertaken and provide transparency regarding its activities.

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The price of Dash is solely determined by buyers and sellers in the secondary market. DCG does not engage in trading Dash and simply sells a portion of the Dash it receives pursuant to approved proposals for Dash Treasury Funds when and as needed to support its ongoing operations.[9]

9. **Is it clear that the primary motivation for purchasing the digital asset is for personal use or consumption, as compared to investment? Have purchasers made representations as to their consumptive, as opposed to their investment, intent? Are the tokens available in increments that correlate with a consumptive versus investment intent?**

As noted above, users acquire Dash through mining, operating a masternode, through an approved proposal for Dash Treasury Funds or in the secondary market. Because users do not acquire Dash from the Network in a purchase transaction, they do not make representations to the Network regarding their intent. While it is impossible to know the subjective motivations of purchasers of Dash, it is evident from the adoption of Dash as an alternative form of payment that many users purchase Dash for personal use as a medium of exchange. Dash has become a leading cryptocurrency, accepted by over 3,900 merchants around the world and can be used to pay for a multitude of goods and services. Dash can be held and transferred in amounts as small as eight (8) decimal places, or 1/100,000,000th of one unit. At current prices, this is less than 1/5,000th of one U.S. cent.[10] Together with Dash's InstantSend feature, this makes Dash suitable for use in everyday transactions like buying a cup of coffee.

10. **Are the tokens distributed in ways to meet users' needs? For example, can the tokens be held or transferred only in amounts that correspond to a purchaser's expected use? Are there built-in incentives that compel using the tokens promptly on the network, such as having the tokens degrade in value over time, or can the tokens be held for extended periods for investment?**

As noted above, Dash can be held and transferred in amounts that make it suitable for everyday use and even micro-payments.

The value of Dash fluctuates over time with market supply and demand, but there is nothing inherent in the Dash protocol that incentivizes either its prompt or later use. Similar to Bitcoin or fiat currencies, Dash can and does act as a store of value, though the value remains volatile at its current scale.

The supply of Dash increases over time as new Dash are created through mining. The amount of Dash created annually has declined as a result of lower block rewards, and is expected to continue to do so.[11] The total amount of Dash that can be created is not expected to exceed 18.9 million.[12]

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[9] DCG endeavors to pay its vendors and contractors in Dash however, it has to exchange some of its Dash into fiat currency in order to pay those vendors and contractors who do not accept Dash.
[10] *See Dash*, https://coinmarketcap.com/currencies/dash/ (last visited Oct. 30, 2018).
[11] As explained in more detail in the Draft Request, block rewards fluctuate based on how much processing power is operating on the Network. Based on the level of processing power currently available to the Network, it is likely that the block reward will remain at its minimum going forward.
[12] The total amount of Dash that ultimately will be created depends on three variables: (i) the number of Dash created as block rewards; (ii) the number of Dash created and allocated each month as Dash Treasury Funds and (iii) decreases in Dash circulation resulting from the destruction of Dash paid as proposal submission fees. Because of these factors, it is highly unlikely that the total number of Dash in circulation will ever exceed 18.9 million.

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11. Is the asset marketed and distributed to potential users or the general public?

Dash is created and distributed by the Network only in connection with mining, operation of a masternode and approved proposals for Dash Treasury Funds. Dash also may be acquired on the secondary market on digital currency exchanges or through direct transfers between users. Users who acquire Dash through mining, operating a masternode or as Dash Treasury Funds are likely potential users of the Network, as are users who acquire Dash directly from other users.

As noted above, no particular person or entity controls the marketing of the benefits of Dash. Dash is marketed by individual users as well as groups and organizations, some of whom are funded by approved Network proposals; consequently, marketing techniques, messages and the audiences for whom they are intended vary. Some parties who promote the use of Dash likely take the view that because Dash is a virtual currency useable by anyone with access to the internet, the potential user base of Dash extends to the general public at large.

12. Are the assets dispersed across a diverse user base or concentrated in the hands of a few that can exert influence over the application?

DCG is not aware of any individuals or entities with concentrated holdings of Dash sufficient to control the outcome of masternode voting or transaction processing on the Network.

While nobody can precisely determine concentration of ownership of Dash due to the fact that ownership of wallets is not known, all anecdotal evidence, such as voting behavior and wallet analysis[13], suggests that Dash is as diversely held as other similar virtual currencies. As of October 30, 2018, the top ten and 100 addresses holding the largest quantities of Dash held 5.36% and 13.99%, respectively, of total Dash in circulation.[14] By comparison, as of that same date, the top ten and 100 addresses holding the largest quantities of Bitcoin held 5.38% and 18.94%, respectively, of total Bitcoin in circulation.[15]

Similarly, based on information made available to DCG by dashcentral.org, a website that allows masternode operators to register their masternodes and obtain access free monitoring and voting tools, DCG believes there is little concentration of masternode ownership. According to such information, as of July 27, 2018, 472 masternode owners had proven ownership of 1,990 masternodes, or approximately 42% of all masternodes as of such date. The most masternodes owned by a single account was 197, which represents approximately 4% of all masternodes as of such date. This data set represents almost half of the masternode population, and DCG believes it offers valuable insight into masternode ownership distribution.

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[13] Analysis of masternode voting supports certain assumptions about the ownership of masternodes. For example, if a block of masternodes consistently votes the same way, it might suggest that they are owned by the same person. Timing of voting is also a potential indicator of common ownership; for example, if a block of masternodes consistently cast their votes at the same time, it might suggest that they are owned by the same person. There are various types of analyses that can help link individual addresses to a single wallet or owner. The most commonly used analysis, referred to as a "taint" analysis, makes the assumption that whenever a transaction involves two or more inputs, those addresses most likely belong to the same user.

[14] *Dash (DASH) price stats and information*, BitInfoCharts, https://bitinfocharts.com/dash/ (last visited Oct. 30, 2018).

[15] *Bitcoin (BTC) price stats and information*, BitInfoCharts, https://bitinfocharts.com/bitcoin/ (last visited Oct. 30, 2018).

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DASH-007

13. Is the application fully functioning or in early stages of development?

The Network has been fully operational since 2014. New features and enhancements are continuously added to the Network to facilitate greater adoption of Dash through improved functionality and security.

DCG submits that application of the factors identified in Director Hinman's speech to Dash and the Network further supports the no action position requested by DCG that Dash is not a security.

If you have any comments or questions, please do not hesitate to contact the undersigned.

[redacted]

EXHIBIT J

BEFORE THE UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

In the Matter of Coinbase, Inc. File No. HO-14315

WELLS SUBMISSION ON BEHALF OF

COINBASE GLOBAL, INC. AND COINBASE, INC.

SULLIVAN & CROMWELL LLP
125 Broad Street
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Attorneys for Coinbase Global, Inc. and Coinbase, Inc.

April 19, 2023

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PRELIMINARY STATEMENT

In April 2021—two years ago this month—this Commission declared effective Coinbase Global, Inc.'s registration statement, allowing Coinbase's shares to be sold to millions of investors the Commission is mission-bound to protect, including retail investors, mutual funds, and pension funds.[1] The Commission did so after years of discussions with Coinbase and a months-long process of extensive review and comment on its registration statement. Those processes focused on all aspects of Coinbase's business, including its listing and custodying of digital assets, provision of trading and staking services, self-custody wallet software, and related securities law analyses.

In May 2021, one month after Coinbase's shares were listed, Chair Gensler told the public that the Commission lacked statutory authority to regulate businesses like Coinbase. He testified before Congress, "I do think that working with Congress, and I think it is only Congress that could really address it, . . . because right now the exchanges trading in these crypto assets do not have a regulatory framework either at the SEC, or our sister agency, the [CFTC] . . . . Right now, there is not a market regulator around these crypto exchanges."[2] The next day, he explicitly stated again that Congress needed to act before the Commission could: "There is *no federal authority* to actually bring a regime to the crypto exchanges . . . . [The SEC] will be working with Congress, if they see fit to try to bring some protection."[3]

Despite these prior statements, four months ago Chair Gensler proclaimed, "I feel that we have enough authority, I really do, in this space" to require crypto companies to register with the

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[1] At the time, the Commission was led by Acting Chair Lee, and Commissioners Peirce, Roisman, and Crenshaw were members. The Division of Corporation Finance was led by Acting Director and future General Counsel John Coates.

[2] *Game Stopped? Who Wins and Loses When Short Sellers, Social Media, and Retail Investors Collide, Part III*, 117th Cong. 1 (May 6, 2021), 167 Cong. Rec. 44-837 (2021) (statement of Gary Gensler).

[3] *SEC Chairman Gary Gensler: There Needs To Be 'Greater Investor Protection' of Crypto Markets*, CNBC (May 7, 2021), https://www.cnbc.com/video/2021/05/07/sec-chairman-gary-gensler-there-needs-to-be-greater-investor-protection-of-crypto-markets.html (emphasis added).

Commission as national securities exchanges ("NSEs").[4] Of course, in the time between these diametrically opposed statements, Congress has not filled the statutory void Chair Gensler once recognized. Nor has the Commission filled that void itself through rulemaking, despite repeated formal requests from Coinbase and others.[5] The only change appears to be the perceived risks in the crypto industry following the collapse of other institutions that are nothing like Coinbase.

Based on this newly expressed view, the Staff now contends that Coinbase has operated illegally since at least 2018. This abrupt move toward litigation did not result from discovering new facts about Coinbase's business; the Commission has the same facts today that it has had for years. Nor does it result from the Staff's discovery of something that Coinbase concealed or misrepresented in its extensive engagement with the Staff, including during the registration process. Coinbase did no such thing.

Instead, the threat of imminent litigation appears to be intended to pressure Coinbase to accept demands that the Commission simply does not have the authority to order; namely, that Coinbase (i) agree that virtually all digital assets listed on Coinbase's platform are securities; and (ii) overhaul its entire business model to register as an NSE and clearing agency, potentially requiring Coinbase to jettison its entire customer-facing business and overhaul its public company governance structure to conform to limits on concentrated voting control of NSEs and clearing agencies. Neither of those objectives is supported by law or within the bounds of the Commission's authority.

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[4] *See SEC's Gensler: The 'Runway Is Getting Shorter' for Non-Compliant Crypto Firms*, Yahoo! News (Dec. 7, 2022), https://news.yahoo.com/sec-gensler-runway-getting-shorter-161605453.html.

[5] *See* App'x A, at 6–8. The Commission reopened its exchange registration proposal only to explicitly address digital asset securities trading platforms on April 14, 2023. This action provides more evidence that the Commission agrees that rulemaking is necessary to provide clarity—having not done so until now further corroborates the fact that the Commission has not provided Coinbase, or the industry, with clear rules of the road. Furthermore, this rulemaking does not address other fundamental issues, including the application of *Howey* to digital assets.

For that sole reason, the Commission should exercise its discretion to decline to bring an enforcement action against Coinbase. But there are other compelling reasons to decline to proceed to litigation too.

First, litigation on this record will put the Commission's own practices on trial, as a court will assess the full history of Coinbase's extensive efforts to engage with the Commission, including during its public listing process. Since at least 2018, the Staff repeatedly asked for (and received) Coinbase's securities law analyses related to its listing process and staking services. That the Staff never raised any specific concerns about Coinbase's ongoing provision of these services should lead the court to conclude that the Commission's claims should be barred on equitable grounds alone.

These same issues were front and center during the Commission's review of Coinbase's registration statement, including in numerous comment letters received from the Division of Corporation Finance. Of course, the Commission could have simply declined to review Coinbase's S-1 as it often appears to do when it questions the legality of an underlying business.[6] But it did not. While the Division of Corporation Finance does not always review a proposed registrant's underlying lines of business for securities law compliance, in Coinbase's case, that is exactly what happened. Securities law is the SEC's core competency. A trier of fact would reject any suggestion that the Staff did not consider Coinbase's compliance with securities law when it allowed Coinbase to go public.[7]

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[6] *See* Letter from Div. Corp. Fin., SEC to AmeriCann, Inc. (Oct. 8, 2019) (marijuana cultivation and distributor company) (declining to review S-1 registration statement), https://www.sec.gov/Archives/edgar/data/1508348/000000000019014401/filename1.pdf; Letter from Div. Corp. Fin., SEC to Elys Game Technology, Corp. (June 8, 2021) (sports betting company) (same), https://www.sec.gov/Archives/edgar/data/1080319/000000000021007076/filename2.txt; Letter from Div. Corp. Fin., SEC to Bright Green Corp. (Sept. 27, 2022) (marijuana cultivation and distributor company) (same), https://www.sec.gov/Archives/edgar/data/1886799/000000000022010650/filename1.pdf.

[7] *See, e.g.*, *Spielman* v. *General Host Corp.*, 402 F. Supp. 190, 197 (S.D.N.Y. 1975), *aff'd* 538 F.2d 39 (2d Cir. 1976) ("While the registration of securities by the SEC does not constitute Commission approval of the language of the prospectus . . . clearance by the Commission in the face of charges identical with those presented here may be given some weight," and the "documentary evidence of arguments pressed by [defendant's] counsel upon the Commission makes this a particularly appropriate case in which to give some credit to the Commission's clearance."); *see also Pabst Brewing Co.* v. *Jacobs*, 549 F. Supp. 1068 (D. Del.), *aff'd*, 707 F.2d 1394 (3d Cir. 1982) ("Generally, courts have refused to accord weight to a clearance of proxy materials by the SEC staff. . . . A limited exception exists, however, where the precise

If the Commission *had* believed in April 2021 that Coinbase's core businesses violated securities law, it would have been required by its own mandate to prevent the S-1 from becoming effective to protect the investing public.[8] Instead, it allowed the offering to proceed, and millions of members of the public invested their savings in Coinbase. Investors could only infer by this approval that the Commission did not think Coinbase's core business was unlawful. It is those innocent investors who stand to lose the most from the Commission's abrupt about-face.

Coinbase's long history of engagement will also demonstrate the Commission's repeated refusal to respond to requests for clarity or rulemaking, even when its own practices or the law so required. This will include Coinbase's exhaustive and fruitless attempts—dozens of meetings and hundreds of hours of communications—to register a securities trading platform with the Commission since at least 2018. For example, Coinbase repeatedly sought guidance on how to activate its Commission-registered alternative trading system ("ATS") subsidiary, given that multiple broker-dealers today operate ATSs through which they provide trading platform, brokerage, and custody services directly to retail customers.[9] But those discussions eventually were terminated due to the Chair's apparent preference to require all retail crypto platforms to instead register as NSEs. This decision is perplexing because the Commission has not adopted or proposed any rule excluding crypto

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factual or legal question has been brought to the attention of the SEC prior to the issue of the form, and the SEC has subsequently allowed the form to be sent to the shareholders without modification . . . . This limited exception is applicable to this case. The SEC's staff had knowledge of the precise legal question that is before this Court and accordingly, this Court must accord some weight to the Staff's inaction.").

[8] The Staff's declaration of the effectiveness of Coinbase's registration statement necessarily reflected consideration of whether (among other things) Coinbase's public listing was consistent with "the public interest and protection of investors." *See* 15 U.S.C. § 77h(a).

[9] *See, e.g.*, Citi-ONE ATS Form ATS-N, https://www.sec.gov/Archives/edgar/data/91154/000009115423000005/xslATS-N_X01/primary_doc.xml; IBKR ATS Form ATS-N, https://www.sec.gov/Archives/edgar/data/922792/000090266422002622/xslATS-N_X01/primary_doc.xml; MS Trajectory Cross ATS-1 Form ATS-N, https://www.sec.gov/Archives/edgar/data/68136/000095012320010536/xslATS-N_X01/primary_doc.xml; Sigma X2 Form ATS-N, https://www.sec.gov/Archives/edgar/data/42352/000095012323000583/xslATS-N_X01/primary_doc.xml; Virtu MatchIt Form ATS-N, https://www.sec.gov/Archives/edgar/data/1457716/000145771623000007/xslATS-N_X01/primary_doc.xml.

platforms from the existing ATS exemption.[10] All of this further calls into question the Chair's invitations to "come in, talk to us, and register," and blithe assertions that "there's a clear way to [register], and there are forms on our website."[11] There still remains no way for Coinbase to register a platform or any products.

Second, the Staff's laundry list of proposed charges all rest on three primary legal theories, each of which is flawed and untested. The Staff first contends that some unidentified subset of the digital assets listed on Coinbase's spot platform meet the definition of a security. We say "unidentified" because when Coinbase asked during the Wells call which assets the Staff views as securities, the Staff responded that it was "not in a position" to identify them. Instead, the Staff pointed to (i) the securities fraud charges the Commission filed last year against a faithless Coinbase employee who front-ran Coinbase's listing of a handful of digital assets in violation of its own policies,[12] and (ii) public statements by Chair Gensler that he believes the majority of digital assets are securities. But Coinbase does not list the majority of digital assets. Nor does Coinbase attempt, as another crypto platform allegedly did, to instigate *post hoc* changes to the factual record to defend its listing decisions.[13]

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[10] Indeed, the Commission's recent proposal on exchange registration solicits comments *for the first time* on whether a digital asset securities trading platform should have the choice to register as an NSE or an ATS. *See* SEC, Supplemental Information and Reopening of Comment Period for Amendments to Exchange Act Rule 3b-16 Regarding the Definition of "Exchange" (Release No. 34-97309) (Apr. 14, 2023), https://www.sec.gov/rules/proposed/2023/34-97309.pdf.

[11] Gary Gensler, *Kennedy and Crypto* (Sept. 8, 2022), https://www.sec.gov/news/speech/gensler-sec-speaks-090822; *CNBC Transcript: SEC Chair Gary Gensler Speaks with CNBC's "Squawk Box" Today*, CNBC (Feb. 10, 2023), https://www.cnbc.com/2023/02/10/first-on-cnbc-cnbc-transcript-sec-chair-gary-gensler-speaks-with-cnbcs-squawk-box-today.html.

[12] Notably, after careful deliberation, the United States Attorney's Office for the Southern District of New York declined to bring securities fraud charges with respect to this same employee's conduct, instead electing to pursue only wire fraud charges. And significantly, rather than await a fully briefed decision on whether the digital asset transactions at issue in that case are, in fact, securities, the Commission has apparently determined to settle the case on what appear to be lenient terms.

[13] *See* Compl., *SEC* v. *Bittrex. Inc.*, 23 Civ. 580 (W.D. Wash. Apr. 17, 2023), ECF No. 1 ("*Bittrex* Compl.").

In litigation, the Commission will not be able to rely on conclusory or broad assertions about what is a security under *SEC* v. *W.J. Howey, Co.*, 328 U.S. 293 (1946). Instead, for each digital asset listed on Coinbase that it contends is a security, the Commission would have to prove that the asset is being sold as part of an investment contract when traded in the secondary market on Coinbase. Notably, the Commission has been engaged in years of protracted litigation attempting to do that for primary market transactions in a single asset: XRP. As there, if the Commission pursues this matter, it will face a well-resourced adversary that will necessarily be motivated to exhaust all avenues. And unlike in that case, here the Commission will need to overcome the growing skepticism courts already have expressed towards extending *Howey*'s reach to include secondary trading of assets where no issuer is involved in the transaction at issue. The Commission will also have to contend with the CFTC's position that many of the same assets the Chair implies are securities, including Ether and various stablecoins, are commodities, raising important questions about fair notice and the limits of Commission authority.

The Staff next contends that Coinbase's spot platform is operating as an unregistered exchange, clearing agency, and broker, and its self-custody Wallet software is operating as an unregistered broker. The Commission also will have to prove that these services fit within these various Exchange Act definitions. That will be no easy task. For example, the Commission has never had to litigate its views about the scope of the clearing agency definition, putting at risk its untested assertions of jurisdiction. With respect to Wallet, even if some of the assets users could access were securities, the access that Coinbase provides through a passive user interface is not enough to trigger broker registration requirements. The Staff has pointed to Coinbase receiving transaction-based compensation for Wallet—which Coinbase no longer does—but the law requires more to sustain an unregistered broker charge.

The Staff further contends that Coinbase's staking services are investment contracts. When asked which asset-specific staking services are in scope, the Staff responded, "All of them," ignoring critical differences among both the assets and Coinbase's related activities. When asked whether

recent changes to Coinbase's staking program impacted its securities analysis, the Staff responded, "We have not yet reached a view on this," again reflecting an apparent approach of determining on the fly what the law requires. Ultimately, the Staff's analysis appears to rest on superficial and incorrect analogies to products and services offered by others, not how Coinbase's services actually operate now or in the past.[14]

An adverse ruling for the Commission on any of these theories would have an impact far beyond the crypto markets. What is more, a court will have to address the unique fair notice and due process concerns presented by the Commission's pursuit of a company whose practices were examined by and known to the Commission when it became a public company. A ruling on those grounds could call into question the Commission's ability to engage with industry through Staff guidance in lieu of rulemaking. Separately, a court will also have to address the Major Questions Doctrine and whether the Commission is exceeding its statutory authority in this matter. This would include contending with the Chair's own prior testimony that the Commission lacks the authority it now seeks to assert, and the Chair's refusal just this week to explain whether specific digital assets are securities and why.[15]

A ruling from a court on these issues could curtail the Commission's ability to address many other novel products or markets without express legislative authority. Further, a court's cabining or rejection of the Commission's *Howey* theory would hinder the Commission's ability to pursue insider trading, fraud, and manipulation cases involving investment contracts. A court's dismissal of either the Commission's clearing agency or broker registration theory would allow numerous firms to

[14] Notwithstanding the narrowly limited information that the Staff has been willing to share regarding their theories or the bases for them, we have tried to summarize above our understanding of the charges that are under consideration. In the event that the Commission considers any violations, legal theories, factual matters, or product offerings that are not addressed in this submission, Coinbase requests an opportunity to address such additional matters before the Commission acts on any enforcement recommendation, in particular if they were not raised in the Wells notice or as part of this investigation.

[15] *See Oversight of the SEC: Hearing Before the Fin. Serv. Comm.*, 118th Cong. (Apr. 18, 2023) (in response to being asked how Chair Gensler "categorize[s] Ether," he responded, "it depends on the facts and the law.").

deregister or otherwise withdraw from SEC oversight. This litany of risks underscores the need for caution and restraint by the Commission.

Third, the investigation of this matter has departed dramatically from the Staff's ordinarily careful and thoughtful approach to matters of similar significance. After Coinbase provided detailed proposals to the Staff for creating paths to registration, the Staff abruptly ended those conversations and shifted back to investigation. The Staff repeated without explanation that "time is of the essence"—perhaps based on the Chair's public statements that the "runway is getting shorter" for crypto companies—took only a few hours of testimony from two mid-level Coinbase employees, and issued a Wells notice while document production on the subjects at issue was still underway.[16] Whether the Staff has done more is a mystery because, in another departure from usual practice, it refused without explanation to make its record available to Coinbase for review. On a record this bare, the Commission's willingness to proceed to serious litigation against a U.S. public company that serves millions of customers without meaningfully exploring other alternatives is, frankly, difficult to understand. This is particularly true given that there is no need for exigency; Coinbase is extensively regulated by the Commission and other U.S. authorities and has a proven track record of customer protection and commitment to compliance.[17] A focus on all of this will only serve to undermine public and judicial confidence in the fairness and thoroughness of the Commission's enforcement processes.

* * *

Coinbase has never wanted to litigate with the Commission. The Commission should not want to litigate either. Litigation will put the Commission's own actions on trial, erode public trust cultivated over decades, undermine incentives for market participants to engage with the Commission in good faith, and present significant risks to broad aspects of the Commission's enforcement program.

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[16] *SEC's Gensler: 'The Runway Is Getting Shorter' for Non-Compliant Crypto Firms*, *supra* n.4.

[17] *See* Coinbase, *Our Approach to Transparency, Risk Management, and Consumer Protection* (Nov. 8, 2022), https://www.coinbase.com/blog/our-approach-to-transparency-risk-management-and-consumer-protection.

Better, alternative paths are available. The Commission could return to Congress to seek the authority it wants over the crypto industry. In the meantime, it could respond to Coinbase's pending petition for rulemaking or initiate its own—giving the industry a fair opportunity to provide input and expertise. And, if the Commission believes that particular digital assets are securities, or certain parts of Coinbase's business should be registered in particular ways, Coinbase continues to welcome that dialogue.

BACKGROUND

I. The Company

Founded in 2012, Coinbase Global, Inc. is the publicly-traded parent company of Coinbase, Inc., the largest digital asset trading platform in the United States and one of the larger such platforms in the world. In 2022, trading volume on Coinbase was $830 billion, reflecting its status as a trusted platform by verified users in more than 100 countries.[18] Roughly 25% of the top 100 largest hedge funds in the world have onboarded with Coinbase.[19] With a market capitalization of more than $16 billion, Coinbase Global, Inc. counts among its shareholders leading mutual funds and institutional investors, as well as a substantial base of retail investors; retail ownership accounts for over 38% of all owners.[20]

Unlike many digital asset platforms, Coinbase made a deliberate decision to be domiciled in the United States and to register its parent's securities with the Commission. Indeed, Coinbase has long embraced regulation—and being regulated in the United States—as a core part of its mission. It has taken many significant steps in that regard:

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[18] Coinbase, Annual Report (Form 10-K), 7–8 (Feb. 21, 2023), https://www.sec.gov/ix?doc=/Archives/edgar/data/1679788/000167978823000031/coin-20221231.htm.

[19] Coinbase, *Shareholder Letter: Fourth Quarter and Full-Year 2022*, 3 (Feb. 21, 2023), https://s27.q4cdn.com/397450999/files/doc_financials/2022/q4/Shareholder-Letter-Q4-2022.pdf.

[20] *See COIN Institutional Holdings*, NASDAQ (Apr. 16, 2023), https://www.nasdaq.com/market-activity/stocks/coin/institutional-holdings.

- ***SEC-Registered Broker-Dealer***. Coinbase Global, Inc. is the direct owner of Coinbase Capital Markets Corp., a non-custodial, executing broker-dealer account that was first registered with the Commission in 1982 and acquired by Coinbase Global, Inc. in 2019, with FINRA approval. Coinbase Capital Markets is currently dormant and requires Commission guidance and further FINRA approval to become operative.

- ***SEC-Noticed ATS***. Coinbase Global, Inc. is also the direct owner of Coinbase Securities, Inc., a registered broker-dealer and ATS that was acquired by Coinbase Global, Inc. in 2018. Unable to find a scalable digital asset securities ATS pathway, Coinbase Securities was forced to file a Cessation of Operations report in June 2021. Coinbase Securities is currently dormant and requires Commission guidance and further FINRA approval to become operative.

- ***State Money Transmitter Licenses***. Since 2014, Coinbase has obtained money transmitter licenses or their equivalent in 45 states (everywhere required), as well as the District of Columbia and Puerto Rico.

- ***New York BitLicense and Trust Company***. In 2017, Coinbase obtained a BitLicense from the New York Department of Financial Services ("NYDFS") for Coinbase and a limited purpose trust company charter for Coinbase Custody Trust Co., LLC, and those entities have been subject to prudential oversight by the NYDFS since that time.

- ***CFTC-Licensed DCM***. In 2022, Coinbase completed acquisition of LMX Labs, LLC, d/b/a Coinbase Derivatives, a CFTC-registered Designated Contract Market, where users can trade, among other products, Bitcoin and Ether derivatives.

Coinbase's extensive licensing and registration efforts are part of its core commitment to regulatory compliance. At no point during the registration process for any of these various licenses did the SEC—or any other regulator—suggest that Coinbase's core business violated the law.

II. Relevant Products and Services

The Coinbase products and services relevant to the Staff's proposed charges are:

- ***The Digital Asset Spot Exchange***. Users of Coinbase's spot exchange are able to custody their digital assets with Coinbase, as well as trade digital assets for other digital assets or fiat currencies by submitting orders to Coinbase's internal order books and automated matching engine.

- ***Coinbase Prime***. Prime is a custody and trading-related service that provides custody of digital assets through Coinbase Custody and access to the spot exchange through a Prime user interface. Prime also provides a routing service for assets supported on Coinbase's spot exchange, which sends orders to third-party platforms that meet Coinbase's rigorous diligence standards.

- ***Coinbase Wallet***. Coinbase Wallet is a free graphical user interface that allows users to self-custody their digital assets—*i.e.*, Wallet users' assets are never within Coinbase's custody or

control. Users can choose to connect their Wallets to third-party decentralized protocols, exchanges, and applications and send, receive, and swap digital assets, without using intermediaries, such as centralized trading platforms. Wallet's core role is limited to translating user instructions into code that can be processed by protocols.

- ***Staking***. Proof-of-stake blockchain protocols rely on staking to validate transactions. Protocol participants can designate (or "stake") their crypto assets on the network by running public open-source software on their computers to validate transactions and receive rewards from the network for their participation. Coinbase's "delegated proof-of-stake" services allow retail users to participate in staking for certain protocols while their assets are custodied at Coinbase.

III. Coinbase's Substantial History of Engagement with the Commission

Since its founding in 2012, Coinbase has been fully transparent about its business and has proactively sought to promote the development of clear U.S. legal standards to responsibly govern the digital asset industry. To this end, for years, Coinbase has (i) shared extensive information with the Commission about its business and securities law analyses for asset listing and staking; (ii) engaged in persistent efforts to register a trading platform to list digital asset securities; and (iii) repeatedly sought clarity and guidance from the Commission regarding its views on the applicability of the securities laws to both Coinbase and the broader digital asset industry. Put simply, Coinbase's core commitment to regulatory compliance has never wavered: "Tell us the rules, and we will follow them."[21]

A chronology of just some of Coinbase's efforts to engage with the Commission over four years spans eight pages and is attached as Appendix A. This list includes dozens of instances in which Coinbase sought clarity from the Commission on when registration might be required for digital asset companies, and, if so, how to effect such registration, including with respect to its dormant broker-dealer and ATS. The list also includes examples of Coinbase's extensive engagement with the Commission on the topics at issue in this Wells, including:

[21] Paul Grewal (Coinbase Chief Legal Officer), *We Asked the SEC For Reasonable Crypto Rules for Americans. We Got Legal Threats Instead*, Coinbase Blog (Mar. 22, 2023), https://www.coinbase.com/blog/we-asked-the-sec-for-reasonable-crypto-rules-for-americans-we-got-legal.

Asset Listing Process. For more than four years, the Commission has been equipped with the same information it has today regarding Coinbase's listing process and related securities law analyses. Between June 2018 and August 2020 alone, Coinbase presented its securities law analysis to the Staff at least seven times, and provided more than a dozen examples of Coinbase's analyses applied to particular assets it lists.[22] Although *Howey* is inapposite to the secondary market trading of digital assets, in the absence of clear guidance, Coinbase has long assessed each asset under *Howey* before listing. Coinbase also tailored its listing framework in response to discussions with the Staff and FinHub's April 2019 Digital Asset Framework—engagement FinHub leadership has publicly recognized.[23]

During Coinbase's six-month-long S-1 review process, the Staff asked on multiple occasions for written information concerning Coinbase's securities law analysis for listed assets, to which Coinbase provided detailed responses. Coinbase explained that its "methodology and weighting is based on its review, in consultation with legal and technical advisors, of the April 2019 Framework developed by [FinHub]."[24] Coinbase also provided the Commission with questions it addresses for each asset, as relevant to each *Howey* prong. For example, Coinbase stated that "whether token holders receive payments or fees in any form as a result of holding the token," and "the existence and content of publicity and statements associated with a project development team all contribute to the overall

[22] *See generally* App'x A. Notwithstanding the privileged nature of legal advice Coinbase has received regarding the application of the securities laws to particular assets, Coinbase voluntarily waived privilege with respect to the specific examples it provided to the Staff. And, despite Coinbase's efforts to engage on the Staff's concerns, the Staff has refused to share with Coinbase any views whatsoever on the specific facts and circumstances of any asset that Coinbase lists or any service that it offers.

[23] *See* Statements of Amy Starr (FinHub), *Perspectives on SEC Engagement Concerning Digital Assets* (June 4, 2019), https://www.youtube.com/watch?v=1-7Qyfkpe60&t=2s; *see also* App'x A at 1-2.

[24] Letter from Coinbase Global, Inc. to Div. Corp. Fin., SEC (Feb. 12, 2021), https://www.sec.gov/Archives/edgar/data/1679788/000162827921000104/filename1.htm.

'weight' of" *Howey*'s "reasonable expectation of profits" and "efforts of others" prongs in Coinbase's analysis.[25] The Staff, again, at no time raised concerns, responding only:

> Please revise [the registration statement] to clarify that ***Bitcoin and Ether are the only digital assets as to which senior officials at the SEC have publicly expressed such a view***, and further clarify that ***as to all other digital assets there is currently no certainty under the applicable legal test*** that such assets are not securities . . . .[26]

At least 48 assets that traded on Coinbase's platform at the time the S-1 was declared effective are still trading on Coinbase today. Now, without any corresponding change to applicable law, the Staff appears to contend that some substantial number of the assets listed on Coinbase's trading platform are securities. No explanation for this change in view has ever been provided.

Coinbase Wallet. Coinbase Wallet has been available since at least 2018. Coinbase's S-1 referenced Wallet at least six times,[27] and since April 2021, Wallet and its functionality have been discussed in at least 14 filings with the Commission; the Commission has never previously raised any concerns.

Staking. The information regarding Coinbase's staking services that the Commission has today is the same that it has had since at least 2019. Prior to Coinbase's S-1 process, Coinbase met with Commission Staff on at least four occasions to provide information regarding its staking program, the specific assets made available for staking, and its related securities law analysis. Coinbase also provided that same legal analysis in writing in January 2020 and February 2021.[28] The Staff raised no concerns during any of those meetings, and Coinbase heard nothing more after submitting its written analysis.

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[25] *Id.*

[26] Letter from Div. Corp. Fin., SEC to Coinbase Global, Inc. (Dec. 7, 2020), https://www.sec.gov/Archives/edgar/data/1679788/000000000020011705/filename1.pdf.

[27] *See* Coinbase Global, Inc., Registration Statement (Form S-1A) (Mar. 23, 2021), https://www.sec.gov/Archives/edgar/data/1679788/000162828021005373/coinbaseglobalincs-1a2.htm.

[28] *See* App'x A, at 2, 4; Letter from Coinbase Global, Inc. to Div. Corp. Fin., SEC (Feb. 12, 2021), https://www.sec.gov/Archives/edgar/data/1679788/000162827921000104/filename1.htm.

Additionally, during Coinbase's six-month S-1 process, the Staff requested Coinbase's "legal analysis as to why [its] activities supporting staking are executed in compliance with the federal securities laws."[29] Coinbase responded with a detailed securities law analysis of its staking program. The Staff replied it "neither agreed nor disagreed" with Coinbase, and did not further comment on this topic before allowing Coinbase's S-1 registration to become effective.[30] Coinbase's final prospectus referenced staking 64 times.[31]

IV. Efforts To Register a Trading Platform with the Commission

Coinbase does not list the vast majority of digital assets that exist today. And it rejects approximately 90% of the assets it reviews for potential listing—many on the basis that they are at high risk of being considered digital asset securities. Coinbase users would like to be able to lawfully trade many of these assets, and Coinbase would like to provide these users with a securities trading platform, which it currently does not. To that end, since at least 2018, Coinbase has engaged in exhaustive efforts with the Commission to register such a platform. Among other things, in 2019 and 2020, Coinbase sought necessary no-action relief from the Commission to operate its dormant broker-dealer ATS. The Staff and certain Commissioners, however, have repeatedly refused to engage with Coinbase regarding registration, let alone to act on such efforts, while simultaneously touting to the public that the Commission's "door is open" and "companies should come in and register."[32]

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[29] Letter from Div. Corp. Fin., SEC to Coinbase Global, Inc. (Dec. 7, 2020), https://www.sec.gov/Archives/edgar/data/1679788/000000000020011705/filename1.pdf.

[30] Letter from Div. Corp. Fin., SEC to Coinbase Global, Inc. (Feb. 5, 2021), https://www.sec.gov/Archives/edgar/data/1679788/000000000021001522/filename1.pdf.

[31] *See* Coinbase Global, Inc., Rule 424(b)(4) Final Prospectus (Apr. 14, 2021), https://www.sec.gov/Archives/edgar/data/1679788/000162828021006850/coinbaseglobalinc424b.htm.

[32] *See* Roslyn Layton, *It's Time To End the SEC's 'Clarity' Charade on Crypto*, Forbes (Sept. 12, 2021), https://www.forbes.com/sites/roslynlayton/2021/09/12/its-time-to-end-the-secs-clarity-charade-on-crypto/?sh=1e7833d325fa. This sentiment has been echoed by numerous market participants. *See, e.g.*, Rodrigo Seira *et al.*, *Lessons from Crypto Projects' Failed Attempts to Register with the SEC* (Mar. 23, 2023), https://policy.paradigm.xyz/writing/secs-path-to-registration-part-ii ("As we have shown . . . projects that have attempted to come into compliance with the SEC's registration requirements expended great effort and resources yet ultimately most of them failed. . . . The failure of projects that have attempted

For example, in December 2019, Coinbase presented a detailed action plan to the Staff on its efforts to activate its two dormant broker-dealers and to obtain necessary approval from the Commission and FINRA.[33] And, in June 2020, Coinbase presented an update to the Staff on its persistent, but unsuccessful, engagement with the Division of Trading and Markets and FINRA, to activate its dormant broker-dealers, and sought further guidance on how to get the registered platform operative. Those efforts came to naught, and Coinbase withdrew its applications.[34]

Between 2019 and the present, Coinbase met with Commissioners or Staff regarding registration-related topics at least 24 times, although, since November 2021, Chair Gensler has repeatedly declined to meet with Coinbase and, since July 2022, his office has referred all meeting requests to Enforcement.[35] While the Chair's door may be open to some—including companies that are not SEC-registrants—it has never been open to Coinbase.

In July 2022, months before Chair Gensler expressed his view that no further authority was needed for the Commission to regulate the digital asset industry, Coinbase filed a petition for rulemaking, requesting that the Commission propose and adopt rules regarding digital asset securities and registration.[36] Coinbase filed two follow-on comment letters dated December 6, 2022, and March 20, 2023.[37] Coinbase's petition and follow-on letters include over 140 specific questions for the

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to register is due in large part to the SEC's reluctance to provide a workable framework through rulemaking, exemptive relief, guidance and industry engagement. Instead, the agency's preferred approach has been to engage in a highly publicized campaign of regulation by enforcement.").

[33] *See* App'x A, at 2.

[34] *Id.* at 2–3.

[35] *Id.* at 5–6.

[36] *See* Coinbase, *Petition for Rulemaking – Digital Asset Securities Regulation* (July 21, 2022), https://www.sec.gov/rules/petitions/2022/petn4-789.pdf.

[37] *See* Coinbase, *Petition for Rulemaking – Digital Asset Issuer Registration and Reporting* (Dec. 6, 2022), https://assets.ctfassets.net/c5bd0wqjc7v0/3gOsojzU0Gl5r9PlTnlqcd/e48708f2e95074e4d727e2eab41dee2b/Comment_Letter_in_Response_to_Petition_-_Disclosures_12_6_22__final_.pdf; Coinbase, *Petition for Rulemaking – "Proof-of-Stake" Blockchain Staking Services* (Mar. 20, 2023),

Commission, and identify specific areas of existing regulation that would need to be clarified or tailored in light of the unique structure of digital asset markets to allow for registration. The Commission has never responded.

Last summer, the Staff invited Coinbase to present its views on potential paths to registration of a digital asset trading platform. Coinbase made dozens of presentations, including on (i) a possible ATS structure, (ii) the feasibility of trading securities and non-securities on a single platform, and (iii) a possible NSE structure and accompanying changes to the Commission's existing processes that would be required.[38] On the eve of providing a response to Coinbase's proposals, the Staff abruptly terminated the discussions without explanation and turned back to its investigation.

ARGUMENT

I. An Enforcement Action Would Present Major Programmatic Risks to the Commission.

The Commission should exercise its discretion to decline to pursue enforcement action against Coinbase for reasons more fundamental than potentially losing the case: If the Commission brings this case, it will do substantial unnecessary harm to the public, and the Commission itself will face significant programmatic risks.

An enforcement action against Coinbase would send a message to market participants and to the public that there is existential risk to being proactively transparent with this Commission. The story that will be told is one of a company that, in trying to bring new products and beneficial innovation to U.S. markets, consistently tried to gain clarity on and comply with the law, including by voluntarily providing the Commission with extensive information about its business, only to have that information used against it in a mystifying effort to extinguish major portions of its business. The regulatory relationship between the Commission and regulated entities has always been one of back-and-forth dialogue. Here, the lack of engagement is detrimental and a departure from that usual practice. The

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https://assets.ctfassets.net/c5bd0wqjc7v0/14M656jdtxxvFF15U9hTGE/5e055b443cf1a5925b8092dadae07d7d/Staking_Comment_Letter_3-20-2023.pdf.

[38] App'x A at 5–8.

Commission cannot complete its tripartite mission of protecting investors, promoting efficient markets, and facilitating capital formation, if companies are loath to voluntarily share information with the Commission.

The enforcement action the Staff is contemplating against a U.S. public company like Coinbase also poses substantial risk to core components of the Commission's enforcement program, and to public confidence in the agency itself. In the Staff's rush to litigation, it does not appear to have considered the extensive collateral consequences that would come from a loss on some or all of its novel claims. For example, the Commission has never had to defend in court its approach to clearing agency regulation. A loss on that claim could lead multiple companies across asset classes to withdraw from Commission regulation. The same holds true for the Staff's novel and untested application of *Howey*, a case brought under the Securities Act of 1933 ("Securities Act"), to secondary market transactions necessary to sustain the unregistered exchange and broker-dealer charges under the Securities Exchange Act of 1934 ("Exchange Act"). A court should limit *Howey* to its original understanding and, in so doing, will substantially cabin the Commission's broad assertion of its authority in cases well beyond the digital asset industry.

Additionally, the Staff's expansive theories with respect to both listing and staking services will have broad market impact. With no clarity on which assets or services the Commission might view as securities and why, and no path to registration, the proposed charges would serve only to deprive millions of U.S. retail users of the benefits of using a well-regulated digital asset platform and custodian when they stake their assets.

A. The Extensive Factual Record in This Case Militates Against Enforcement.

Litigation will showcase the history of Coinbase's interactions with the Commission over the past four years, regarding the same topics that are the subject of the Wells notice. But significantly, a case against Coinbase will demonstrate that litigation is being used to pressure Coinbase into accepting a fate that the Commission does not have the authority to order—one that would require Coinbase to (i) concede that a substantial set of Coinbase-listed digital assets are securities, even though they are

not; and (ii) overhaul its entire business model and public share governance structure, a model extensively discussed with the Commission in the S-1 process, to register as an NSE. Neither of those objectives is supported by law or within the bounds of the Commission's authority.

Litigation will further demonstrate that, in an attempt to achieve these policy ends, the Staff abruptly rushed to enforcement, bypassing the Commission's ordinary investigatory processes. And in another departure from usual practice, the Staff refused to make its record available to Coinbase for review in the Wells process. Rushing to court on a record like this casts a shadow over the important investigative work that historically has been undertaken by the Staff, undermining judicial and public confidence in its enforcement efforts. And a loss on any one of the Staff's novel theories would substantially limit the Commission's authority.

The Staff has also declined to engage with Coinbase on facts that are critical to its contemplated theories. For example, Coinbase recently made changes to its staking services and Wallet. And although Coinbase does not think these products were ever within the scope of the Commission's jurisdiction, with these changes, this question is beyond doubt. But the Staff has not asked about these changes, much less discussed their impact on its claims. This not only calls into question the factual bases for the Staff's contemplated charges, but also raises a multitude of fair notice and equitable concerns that would bar an enforcement action from proceeding. Indeed, Coinbase's history of attempted engagement, met with silence from the Staff and the Commission, will provide the strongest possible evidence of what courts already have observed: Market participants did not receive "fair notice" of a regulatory regime that regulators themselves cannot agree on.[39] The Commission cannot now seek to charge these participants for violating laws that the Commission failed to articulate—even when asked by the industry and Congress—and how those laws would apply to them.

[39] *See In re Voyager Dig. Holdings, Inc.*, 649 B.R. 111, 119 (Bankr. S.D.N.Y. Mar. 11, 2023) ("[R]egulators themselves cannot seem to agree as to whether cryptocurrencies are commodities that may be subject to regulation by the CFTC, or whether they are securities . . . subject to securities laws, or neither, or even on what criteria should be applied in making the decision. This uncertainty has persisted despite the fact that the cryptocurrency exchanges have been around for a number of years.")

B. The Staff's Case Rests on Unsupported and Untested Legal Theories.

The Commission should exercise its discretion to decline enforcement for another fundamental reason: Each of the Staff's purported legal theories—to the extent they can be discerned—is unsupported by law, untested in court, and likely to result in unintended consequences for the Commission, investors, and markets far beyond the digital asset industry.

The Commission's settled enforcement actions in this space do not carry the force of law in potential litigation against Coinbase. If the Commission pursues litigation against Coinbase, each of these theories will be fully aired, tested, and likely upended. And while Coinbase is fully prepared to litigate these issues, it is worth reiterating that Coinbase should not be forced to do so when there are viable alternative paths available.

1. The Staff's Theories Are Predicated on a Misapplication of *Howey*.

The Staff alleges three primary claims against Coinbase. *First*, the Staff contends that Coinbase is acting as an unregistered securities exchange and clearing agency, in violation of Sections 5 and 17A of the Exchange Act, respectively, based on its spot exchange-related activities. *Second*, the Staff contends Coinbase is acting as an unregistered broker, in violation of Section 15(a) of the Exchange Act, based on its trading-related services, including the spot exchange and Coinbase Prime, and through its provision of self-custody wallet software, Coinbase Wallet. *Third*, the Staff claims that Coinbase's staking services constitute an unregistered securities offering, in violation of Sections 5(a) and (c) of the Securities Act.

The Staff's purported theories as to each of these claims—which Coinbase is mostly left to guess—all appear to rely on a misapplication of existing law that no court could uphold. Specifically, to support claims that Coinbase is acting as an unregistered securities exchange, clearing agency, and broker-dealer, the Staff contends that secondary trading in unidentified assets listed on Coinbase's spot platform—or made available through Wallet—are all securities. But the Staff's theories with respect to secondary trading have no support in existing law.

The *Howey* test does not map on to secondary market trading. The plain text of the Securities and Exchange Acts require the presence of a *contract* with an issuer, promoter, or distributor of an investment or scheme for there to be a security. *See* 15 U.S.C. § 77b(a)(1); *id.* § 78c(a)(10). An attempt to apply *Howey* here, where no such contract exists, especially in the absence of any secondary purchaser's reliance on promises by the issuer or promoter, will fail. Indeed, the sole appellate decision to address *Howey* in a context without an issuer or promoter, contradicts the Staff's now-asserted position. In *Hocking* v. *Dubois*, 885 F.2d 1449 (9th Cir. 1989) (en banc), the court held that the combination of a condominium purchase and an option to enter into a rental pool agreement did not automatically constitute an investment contract. Notably, the court observed: "In its amicus brief, the SEC argues that in the absence of any affiliation or selling arrangement between the sellers of the condominium (or the real estate agent) and the operator of the rental pool, the sale of a condominium is not a transaction that involves an investment contract." *Id.* at 1458 n.7. That is exactly the opposite of the position the Staff now appears to take.

Were the Staff to pursue this theory, a court should limit *Howey* to its original, intended scope (*i.e.*, circumstances where a purchaser enters into an explicit contractual arrangement with an asset's issuer or promoter). Such a ruling would not only diminish the Commission's jurisdiction over digital asset markets, but would also undermine its ability to pursue a range of cases premised on broad *Howey*-related theories.

2. The Staff's Clearing Agency Theory Is Unsupported by Law, Ignores Statutory Exemptions, and Would Have Far-Reaching Impact Across Industries.

The Staff's claim that Coinbase acts as an unregistered clearing agency is equally unavailing. There can be no clearing agency without securities transactions. Coinbase neither lists nor facilitates transactions in securities and, therefore, cannot be a clearing agency.

But even if there were securities transactions, Coinbase still would not be acting as a clearing agency under the law. The Staff has not specified which of Coinbase's operations it believes constitute clearing agency activity—the Staff has neither conducted any interviews nor received documents

regarding Coinbase's supposed clearing agency activity. Thus, Coinbase can only speculate that the Staff is wrongfully conflating a Coinbase entity such as Coinbase's trading platform or custody business, both regulated by NYDFS, with clearing agency activity. But the Exchange Act provides a tailored and precise "clearing agency" definition, centered on firms that act as central counterparties, central securities depositories or facilities that allow "for comparison of data respecting the terms of settlement of securities transactions, to reduce the number of settlements of securities transactions, or for the allocation of securities settlement responsibilities." 15 U.S.C. § 78c(a)(23)(A). Coinbase provides none of these services.

The Exchange Act definition is further limited by enumerated exclusions, including for broker-dealers and national securities exchanges that provide clearing-related functions that are part of their customary broker, dealer, or exchange activities. 15 U.S.C. § 78c(a)(23)(B). The Commission would be acting contrary to law if it claimed, despite these exclusions, that Coinbase is an unregistered clearing agency, given that the Commission also alleged that Coinbase should be registered as a broker or exchange.

The risk to the Commission making this argument extends beyond a case against Coinbase. The Commission has long provided broad but informal interpretations of the scope of the clearing agency definition. For example, in 1998, the Commission published an interpretive release providing that certain matching services constitute clearing agency functionality.[40] Likewise, in 2011, the Commission published another interpretive release providing that security-based swap market participants offering collateral management services, trade matching services, and tear up and compression services are engaging in clearing agency activity.[41] And the Division of Trading and Markets granted Paxos no-action relief from clearing agency registration in connection with its

[40] Confirmation and Affirmation of Securities Trades; Matching, 63 Fed. Reg. 17,943 (Apr. 13, 1998).

[41] Securities Exchange Act Release No. 64017 (Mar. 3, 2011), 76 Fed. Reg. 14,472 (Mar. 16, 2011).

operation of a securities settlement system.[42] Many market participants have registered with, sought exemptions from, or otherwise relied upon interpretations from the Commission with respect to clearing agency activity. A court ruling narrowing the Commission's authority could result in the Commission losing some or all of its jurisdiction over these firms.[43] The Commission has never had to defend these clearing agency interpretations before a court, but it would have to do so in litigation against Coinbase. An adverse decision for the Commission could upset decades of seemingly unchallenged authority, unsettle the Commission's clearing and settlement regulatory regime, and risk substantial market disruption. The Commission should exercise cautioned restraint in considering whether to put that guidance at risk.

3. The Staff's Broker Theories for Wallet Are Unsupported by Law and Pose Widespread Programmatic Risk.

The Staff further contends that Coinbase Wallet—a graphical user interface that allows users to self-custody their assets and connect to third-party platforms—is operating as an unregistered broker-dealer in violation of Section 15(a) of the Exchange Act. The Staff's broker theory appears to be based entirely on Coinbase having received "transaction-based compensation" for certain, limited transactions. Coinbase, however, no longer receives such compensation, and the fact that it did at one time would be insufficient as a matter of law to sustain an unregistered broker charge.

To prevail on a broker charge, the Commission first would need to prove, on an individualized basis, that each secondary transaction at issue through Wallet involved a security, which it cannot do. But even if it could, Coinbase's historical receipt of certain transaction-based compensation is not sufficient to prove that Wallet is a broker. Although Staff no-action guidance has declared transaction-based compensation as sufficient to require broker registration even for passive technology platforms,

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[42] *Paxos Trust Co.*, SEC Staff No-Action Letter, 2019 WL 5543753 (Oct. 28, 2019).

[43] For example, Bloomberg, DTCC, and SS&C have obtained exemptions in reliance on this guidance. *See Clearing Agencies*, U.S. Sec. & Exch. Comm'n (Mar. 24, 2023), https://www.sec.gov/tm/clearing-agencies.

that view is squarely at odds with how courts routinely analyze the broker determination and would analyze Wallet in any litigation.[44] Although there is no case law on self-custody wallets, courts make clear that the broker determination is fact-specific and based on the totality of the circumstances—and that meeting one factor, including receiving transaction-based compensation, is not dispositive.[45]

Losing on the Wallet claim would significantly narrow how the broker definition is interpreted, circumscribing the Commission's asserted authority even in traditional markets by allowing traditional securities-related technology service providers that the Commission regulates today to deregister with the Commission.

C. The Staff's Novel Legal Theories Would Be Foreclosed by the Major Questions Doctrine, Due Process, and Equitable Defenses.

The Staff's novel and far-reaching claims face additional threshold hurdles on the bases of the Major Questions Doctrine, due process concerns, and a multitude of equitable defenses. Coinbase is uniquely positioned to prevail on these arguments.

1. The Major Questions Doctrine Forecloses the Staff's Novel Theories.

The Staff's claims predicated on secondary trading and authority over IT services (staking) and software (Wallet) should be foreclosed by the Major Questions Doctrine.

a. The Major Questions Doctrine Forecloses the Commission's Efforts to Use *Howey* to Regulate the Entire Digital Asset Industry.

Courts consistently presume that "Congress intends to make major policy decisions itself, not leave those decisions to agencies." *West Virginia* v. *EPA*, 142 S. Ct. 2587, 2609 (2022). The Supreme

[44] *See, e.g.*, *SEC* v. *Hansen*, 1984 WL 2413 (S.D.N.Y. Apr. 6, 1984); *SEC* v. *Hui Feng*, 935 F.3d 721 (9th Cir. 2019).

[45] *See, e.g.*, *SEC* v. *RMR Asset Mgmt. Co.*, 479 F. Supp. 3d 923, 926 (S.D. Cal. 2020) (applying a "totality of the circumstances" approach to determine if a person had engaged in being a broker-dealer); *SEC* v. *U.S. Pension Trust Corp.*, 2009 WL 2365702, at *9 (S.D. Fla. July 30, 2009) (finding summary judgment inappropriate even though defendants actively solicited investors, received transaction-based compensation, and regularly participated in securities transactions because of fact disputes on whether they advised investors as to the merits of the investments and the relationship between the defendants and the purchasers of the securities).

Court has explained that an agency's assertion of "unheralded regulatory power over a significant portion of the American economy" presents a major question. *Id.* at 2608. And to take such regulatory action, it must point to *clear* congressional authorization. *See Ala. Ass'n of Realtors* v. *HHS*, 141 S. Ct. 2485, 2489 (2021).

The digital asset industry is valued at over one trillion dollars.[46] Twenty percent of Americans own cryptocurrency, and the per-day worldwide trading volume is around $100 billion.[47] The industry employs thousands of Americans.[48] An agency declaration that the majority of all digital assets, or more shockingly that all digital assets other than Bitcoin, are unregistered "securities" that cannot legally be traded constitutes an obvious assertion of regulatory authority over a "significant portion of the American economy." *West Virginia*, 142 S. Ct. at 4608.

Other points underscore the lack of clear congressional authorization for the Commission's attempts to assert sweeping regulatory authority over the entire digital asset industry, through ad hoc enforcement against Coinbase. The Supreme Court has explained that when an issue "has been the subject of earnest and profound debate across the country," an agency's claim of delegated authority is "all the more suspect." *West Virginia*, 142 S. Ct. at 2614. Congress is actively debating the Commission's "approach to digital assets" and the proper "regulatory sphere for digital assets."[49] If

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[46] *See* Michelle Neal, *Advances in Digital Currency Experimentation*, Fed. Reserve Bank N.Y. (Nov. 4, 2022), https://www.newyorkfed.org/newsevents/speeches/2022/nea221104.

[47] *See* Thomas Franck, *One in Five Adults Has Invested in, Traded or Used Cryptocurrency*, *NBC News Poll Shows*, NBCNews.com (Mar. 31, 2022), https://www.nbcnews.com/tech/tech-news/one-five-adults-invested-traded-used-cryptocurrency-nbc-news-poll-show-rcna22380; CoinGecko, *Q2 2022 Cryptocurrency Report* (July 13, 2022), https://www.coingecko.com/research/publications/q2-2022-cryptocurrency-report.

[48] *See* Jamie Redman, *Crypto Employment Abounds with More Than 8,000 Jobs in 2020*, Bitcoin.com (Jan. 18, 2020), https://news.bitcoin.com/crypto-employment-abounds-with-more-than-8000-jobs-in-2020.

[49] Financial Services GOP (@Financial Services GOP), Twitter (Mar. 28, 2023), https://twitter.com/FinancialCmte/status/1640816951843774466?cxt=HHwWhICzweCUrcUtAAAA (interview of Rep. Patrick McHenry announcing April 18, 2023 House Financial Services Committee oversight hearing); *see also, e.g.*, Rep. Ben Cline, Budget Hearing—Fiscal Year 2024 Request for the CFTC Before the House Comm. on Agric., Rural Dev., Food and Drug Admin. & Related Agencies (Mar. 28, 2023) (noting SEC and CFTC's conflicting positions on digital assets and recommending that "legislation to

Congress had already clearly authorized the Commission to regulate in this area, there would be no need for debate.

The issue of whether or which digital assets can be characterized as securities is not just the "subject of earnest and profound debate across the country." *West Virginia*, 142 S. Ct. at 2614. It is the subject of debate across Chair Gensler's own statements over the past few years.[50] And in the past few weeks, the CFTC formally took a position contrary to the one the Commission appears willing to assert in potential litigation against Coinbase.[51]

Ultimately, Congress is the appropriate body to develop a comprehensive regulatory regime for the digital asset industry. Until it does so, the Commission may not assert authority over the entire industry via enforcement.[52] Courts recently and repeatedly have signaled that they would agree.[53]

b. Regulation of Secondary Trading in Digital Assets Is Also a Major Question.

Regulation of secondary trading in digital assets poses another major question. Significantly, Chair Gensler previously acknowledged the Commission's lack of statutory authority over digital asset

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address th[is] issue should place regulatory authority with the CFTC"); Digital Commodities Consumer Protection Act, S. 4760 , 117th Cong. (2021-2022); Lummis-Gillibrand Responsible Financial Innovation Act, S. 4356, 117th Cong. (2021-2022).

[50] *Compare* Gary Gensler, *Fintech Beyond Crisis*, MIT Sloan School of Mgmt. Conf. (Apr. 25, 2019) ("Silvio Micali's Alogrand, he's a Turing Award winner at MIT I work with . . . Silvio's got a great technology, it has performance, you could create Uber on top of it."), *with Bittrex* Compl. at ¶ 179 (since its 2019 initial token sale "ALGO was offered and sold as an investment contract and therefore a security").

[51] Compl. at ¶ 24, *CFTC* v. *Zhao*, No. 23-cv-01887 (N.D. Ill. Mar. 27, 2023), ECF No. 1; Compl. at ¶ 12, *CFTC* v. *Russell*, No. 23-cv-2691 (E.D.N.Y. Apr. 11, 2023), ECF No. 1.

[52] *See Christopher* v. *SmithKline Beecham Corp.*, 567 U.S. 142 (2012) (invalidating an agency enforcement action where the agency invoked an "interpretation to impose potentially massive liability . . . for conduct that occurred well before the interpretation was announced").

[53] *See In re Voyager Dig. Holdings, Inc.,* 649 B.R. 111, 119 (Bankr. S.D.N.Y. Mar. 11, 2023) ("There have been differing proposals in Congress to adopt different types of regulatory regimes for cryptocurrency trading. Meanwhile, the SEC has filed some actions against particular firms with regard to particular cryptocurrencies, and those actions suggest that a wider regulatory assault may be forthcoming. The CFTC seems to have taken some positions that are at odds with the SEC's views. Just how this will all sort itself out, how the pending actions relating to cryptocurrencies will be decided, and just what issues might be raised in future regulatory actions, and how they will affect individual firms or the industry as a whole, is unknown.").

secondary trading platforms and explicitly recognized in May 2021 that Congress would have to act before the Commission was granted any such authority.[54] But now, without the passage of any legislation or rulemaking, the Commission's authority in this space has somehow appeared. Late last year, Chair Gensler declared, "I feel that we have enough authority, I really do, in this space" to require crypto companies "to come into compliance" with the Commission's NSE registration requirements.[55] This sort of *ipse dixit* is not sufficient to oppose a Major Questions Doctrine challenge here.

The vast majority of the Commission's prior digital asset cases in federal court involved primary offerings, which can resemble securities offerings properly subject to Commission oversight—but which are materially different from secondary trading.[56] That the Commission has not before sought to regulate all digital asset secondary trading is not surprising. Unlike in the primary offering context, where Commission disclosure rules have a singular role to play, in the secondary market context the Commission is not uniquely situated. Investors transact in currencies, commodities, and commodity futures on exchanges without Commission regulation. Instead, U.S. law empowers other regulators—the CFTC in the case of commodity derivatives, and the states in the case of spot market commodities and currency transactions.

The Commission itself appears to have recognized the limits to its authority in the absence of formal rulemaking. For example, in a recently litigated matter, a federal judge asked a member of the

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[54] *See Game Stopped? Who Wins and Loses When Short Sellers, Social Media, and Retail Investors Collide, supra* n.2; SEC Chairman Gary Gensler: *There Needs To Be 'Greater Investor Protection' of Crypto Markets*, CNBC (May 7, 2021), *supra* n.3.

[55] *SEC's Gensler: The 'Runway Is Getting Shorter' for Non-Compliant Crypto Firms*, *supra* n.4 (Statement of Gary Gensler).

[56] The sole outlier federal court action involving secondary trading, *SEC* v. *Wahi*, 2:22-cv-010009 (W.D. Wash. July 21, 2022), focused only on a small handful of tokens and did not purport to assert authority over the entire crypto industry. And the Commission's new enforcement action against Beaxy Digital for running an unregistered securities exchange is premised on the contention that Beaxy facilitated trading in "crypto asset securities," circularly defined as digital assets that "meet[] the definition of a security under the federal securities laws." Compl. at 2 n.1, *SEC* v. *Beaxy Digital Ltd.*, No. 23-cv-1962 (N.D. Ill. Mar. 29, 2023), ECF No. 1.

Commission trial team whether the Commission would be willing to fashion a settlement where the "SEC would take positions on things like . . . the secondary market" for a particular asset. The Commission's lawyer responded that the judge's request was:

> [A]n ask to have the SEC make policy through a settled remedy, [but] you know, there should be consistency across . . . the industry. We will see what we can do, but . . . it could be very difficult for the SEC to fashion a policy about secondary sales in this circumstance because it really is policy and we're constrained by all of the things that have to go into it before the SEC makes policy.[57]

In short, the Commission has never relied on its authority to impose such a remarkable measure, particularly in an enforcement setting, and it should continue to adhere to the "constraints" on its authority to do so. *Id.*; *see also West Virginia*, 142 S. Ct. at 2609.

c. The Major Questions Doctrine Also Forecloses the Commission's Efforts to Regulate IT Services or Software as a Securities Offering (Staking) or Broker (Wallet).

The Staff's position, with respect to the provision of IT services (staking) and software (Wallet), is an attempt to regulate how IT service providers were or are compensated; the Securities and Exchange Acts confer no such authority. The U.S. technology industry is undoubtedly a "significant portion of the U.S. economy"—valued at $1.8 trillion and comprising 9.3% of the total U.S. economy[58]—and thus requires clear congressional authorization to regulate. *See Ala. Ass'n of Realtors*, 141 S. Ct. at 2489.

Today, there is active policy debate on how to regulate technology companies, including among the Federal Trade Commission and Federal Communications Commission.[59] The Commission is mentioned nowhere in that debate and has no legislatively-granted authority to regulate this space.

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[57] Tr. of Hr'g at 34, *SEC* v. *LBRY*, 21-cv-00260 (D.N.H. Nov. 21, 2022).

[58] *Tech GDP as a Percent of Total GDP in the U.S. 2017-2021*, Statista (Apr. 7, 2022), https://www.statista.com/statistics/1239480/united-states-leading-states-by-tech-contribution-to-gross-product/.

[59] *See, e.g.*, FTC Comm'r Noah Joshua Phillips, *How (Not) to Regulate Technology* (Oct. 6, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/hudson-speech.pdf; FCC Comm'r Michael O'Rielly, *Remarks Before Silicon Flatirons Tech Conference* (Feb. 10, 2020), https://www.fcc.gov/document/comm-orielly-remarks-silicon-flatirons-tech-conference.

2. The Fair Notice Doctrine Forecloses an Enforcement Action.

If the Commission were to proceed with litigation, based on the facts present here and its long history of inaction, inconsistent statements regarding what the law requires, and pattern of announcing new policies via enforcement, Coinbase has compelling arguments that any enforcement action should be foreclosed on due process and fair notice grounds. The circumstances present in Coinbase's case go far beyond the facts of the fair notice defenses that the Commission has previously faced.[60]

a. Coinbase Lacked Fair Notice of the Commission's Position on Digital Asset Securities.

"[L]aws which regulate persons or entities must give fair notice of conduct that is forbidden or required," and regulated parties must "know what is required of them so they may act accordingly." *FCC* v. *Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012); *see also Fortyune* v. *City of Lomita*, 766 F.3d 1098, 1105 (9th Cir. 2014) ("Entities regulated by administrative agencies have a due process right to fair notice of regulators' requirements.").

It is bedrock law that an agency announcing new policies via enforcement action fails to provide "fair notice" because regulated parties cannot be expected to "divine the agency's interpretations in advance or else be held liable when the agency announces its interpretations for the first time in an enforcement proceeding." *Christopher* v. *SmithKline Beecham Corp.*, 567 U.S. 142, 159 (2012); *see also Pfaff* v. *U.S. Dep't of Hous. & Urban Dev.*, 88 F.3d 739, 748 n.4 (9th Cir. 1996) ("The disadvantage to adjudicative procedures is the lack of notice they provide to those subject to the agency's authority."). When "an agency's announcement of its interpretation is preceded by a very lengthy period of conspicuous inaction, the potential for unfair surprise" and the resulting due process violation, is particularly "acute." *Christopher*, 567 U.S. at 158.

[60] *See, e.g.*, Defs.' Opp. to Pl.'s Mot. Summ. J., 43–58, *SEC* v. *Ripple Labs Inc.*, No. 20 Civ. 10832 (AT) (SN) (S.D.N.Y. Oct. 21, 2022), ECF No. 675 (arguing that Defendants did not have fair notice that in issuing and offering XRP, they were required to register XRP as a security).

To date, the Commission has provided market participants, including Coinbase, with virtually no information—or at best conflicting information—about which digital assets or transactions in digital assets it views as securities and why. This is despite the fact that Coinbase and numerous other digital asset platforms have existed for more than a decade, and the Commission has received relevant securities law analyses from Coinbase since at least 2018 and never before raised any concerns. The Commission has ignored rulemaking petitions and calls for greater transparency, and it now contemplates seeking potential injunctive relief, while continuing to refuse to engage substantively on the topics at issue.[61] Fair notice squarely proscribes enforcement in these circumstances.

The fair notice issues here are only heightened by the uncertainty and confusion caused by the Commission's continuously shifting views on what the law requires. Indeed, "[c]onfusion within the enforcing agency as to the proper interpretation of a regulation is . . . relevant evidence to show a lack of fair notice." *United States* v. *S. Ind. Gas & Elec. Co.*, 245 F. Supp. 2d 994, 1011 (S.D. Ind. 2003).[62]

Chair Gensler has articulated diametrically opposed and inconsistent views about whether the Commission, or any regulator, has authority over digital asset exchanges. And there is a history of conflicting statements among Commission leadership as to what digital assets fall within their jurisdiction. Senior Commission Staff long expressed views that Bitcoin and Ether are not securities.[63]

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[61] *See Sherman* v. *Posner*, 266 F. Supp. 871, 874 (S.D.N.Y. 1966) ("Notwithstanding the Commission's rules, this court is not disposed, as some would suggest, to completely emasculate the actions of the Commission of any meaning. It is submitted that the action, or inaction, as the case may be, of the Commission is to be accorded some weight where, as in our case, the information which forms the basis for an injunctive motion previously has been brought to the attention of the Commission and the Commission has presumably approved issuance of the material. In an area where the primary power of protection of investors is vested in the Commission, their failure to take a stronger position is of some weight, particularly on a motion of this sort for preliminary relief.")

[62] *See Rollins Env't Servs.* v. *EPA*, 937 F.2d 649, 653 (D.C. Cir. 1991) (imposing no penalty for regulatory violation, because "[n]o reasonable reader . . . could have known that EPA's current construction [of the regulation] is what the agency originally must have had in mind," when the EPA "itself is uncertain of the meaning of its regulation, when agency personnel give conflicting advice to private parties about how to comply with it, and when the agency's chief legal officer finds the regulatory language equally supportive of one of two possible constructions").

[63] *See* William Hinman, Dir., Div. of Corp. Fin., SEC, *Digital Asset Transactions: When Howey Met Gary (Plastic)*, U.S. Sec. & Exch. Comm'n (June 14, 2018), https://www.sec.gov/news/speech/speech-hinman-

Indeed, during Coinbase's public listing process, the Staff informed Coinbase that "Bitcoin and Ether are the only digital assets as to which senior officials at the SEC have publicly expressed such a view," and asked Coinbase to revise its S-1 to reflect that "*as to all other digital assets, there is currently no certainty* under the applicable legal test."[64] That is because the Commission implicitly recognized that it would need Congressional authority and/or rulemaking to bring certainty to these questions—a point Chair Gensler recognized just the following month. But then, earlier this year, Chair Gensler stated that he believes that "[e]verything other than Bitcoin," including Ether, is clearly a security.[65] And just this week, the Chair inexplicably refused to tell Congress whether Ether is a security.[66]

There is also confusion between the two major regulators in the digital assets space—the SEC and CFTC have expressed conflicting views with each other over time. After Chair Gensler recently stated that "[e]verything other than Bitcoin," including Ether, is clearly a security,[67] CFTC Chair Behnam testified twice that "[E]ther is a commodity" and therefore falls under the CFTC's jurisdiction.[68] The CFTC Chair noted that both agencies previously consulted about whether Bitcoin

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061418 (noting in a public speech that well-established cryptocurrencies, including Bitcoin and Ether, were "no longer" securities, if they ever were, and that a "token . . . by itself is not a security"); *see also Framework for "Investment Contract" Analysis of Digital Assets*, SEC (Apr. 3, 2019), https://www.sec.gov/corpfin/framework-investment-contract-analysis-digital-assets (FinHub's 2019 public framework for identifying "some of the factors to be considered in determining whether and when a digital asset may no longer be a security," which includes Hinman's concept of decentralization, and does "not replace or supersede" prior statements of the Staff or Commission).

[64] Letter from Div. Corp. Fin., SEC to Coinbase Global, Inc. (Dec. 7, 2020), https://www.sec.gov/Archives/edgar/data/1679788/000000000020011705/filename1.pdf (emphasis added).

[65] *See, e.g.*, Ankush Khardori, *Can Gary Gensler Survive Crypto Winter? D.C.'s Top Financial Cop on Bankman-Fried Blowback*, Intelligencer (Feb. 23, 2023), https://nymag.com/intelligencer/2023/02/gary-gensler-on-meeting-with-sbf-and-his-crypto-crackdown.html (quoting Chairman Gensler as saying that "[e]verything other than Bitcoin" looks like a security).

[66] *See Oversight of the SEC: Hearing Before the Fin. Serv. Comm.*, 118th Cong. (Apr. 18, 2023) (Chair Gensler's response on how he "categorize[s] Ether": "it depends on the facts and the law").

[67] *See id.*

[68] *See, e.g.*, CFTC Chair Rostin Behnam, Comments Before the U.S. Senate Comm. on Agriculture, Nutrition, & Forestry (Mar. 8, 2023); CFTC Chair Rostin Behnam, Comments Budget Hearing—Fiscal Year 2024 Request for the CFTC Before the U.S. House of Representatives Subcomm. on Agriculture,

and Ether fell "within the commodity regime ***or*** the securities regime," and determined that these were commodities; this has resulted in Bitcoin and Ether derivatives trading on CFTC registered platforms since 2014 (Bitcoin) and 2020 (Ether).[69] Billions of notional CFTC-regulated Ether derivatives have traded in reliance on the previously settled view (of both the SEC and CFTC) that Ether was a non-security commodity.

To add to the confusion, the CFTC recently brought two enforcement actions premised on the notion that Ether and other assets (such as Litecoin, and stablecoins USDC, USDT, and BUSD), are commodities within the scope of its enforcement authority.[70] The Commission seemingly disputes this position in light of the recent Wells notice to BUSD's issuer, Paxos, asserting that this stablecoin is an unregistered security.[71]

As a federal judge recently observed: "[R]egulators themselves cannot seem to agree as to whether cryptocurrencies are commodities that may be subject to regulation by the CFTC, or whether they are securities . . . subject to securities laws, or neither, or even on what criteria should be applied in making the decision. This uncertainty has persisted despite the fact that the cryptocurrency exchanges have been around for a number of years." *In re Voyager Dig. Holdings, Inc*., 649 B.R. 111, 119 (Bankr. S.D.N.Y. Mar. 11, 2023). Moreover, while "[t]he current regulatory environment can

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Rural Dev., Food and Drug Administration & Related Agencies (Mar. 28, 2023) ("[I]n my view—and I've said this many times—I believe [Ether and Bitcoin] are a commodity."); *see also* CFTC Chair Heath Tarbert, Comments on Cryptocurrency Regulation at Yahoo! Finance All Markets Summit (Oct. 29, 2019) ("It is my view as Chairman of the CFTC that [E]ther is a commodity, and therefore it will be regulated under the CEA.").

[69] *Digital Assets Primer*, CFTC (Dec. 2020), https://www.cftc.gov/media/5476/DigitalAssetsPrimer/download (stating that "[t]he first [B]itcoin derivative . . . was listed for trading by TeraExchange in 2014" and "[i]n 2020, ErisX listed for trading the first futures contract based on [E]ther").

[70] Compl. at ¶ 24, *CFTC* v. *Zhao*, No. 23-cv-01887 (N.D. Ill. Mar. 27, 2023), ECF No. 1; Compl. at ¶ 12, *CFTC* v. *Russell*, No. 23-cv-2691 (E.D.N.Y. April 11, 2023), ECF No. 1.

[71] *Paxos Issues Statement*, Paxos (Feb. 13, 2023), https://paxos.com/2023/02/13/paxos-issues-statement/.

only be characterized as uncertain," "the future regulatory environment can only be characterized . . . as virtually unknowable." *Id.*

Coinbase obviously had no notice of these vacillating positions when the Commission allowed it to become a public company in 2021. And, as Congress observed just this week, the Commission still has not issued formal guidance that could allow anyone to understand whether or not they will be viewed as violating securities laws.[72] An enforcement action against Coinbase here would represent the type of unforeseeable regulatory action that due process squarely prohibits.

b. Coinbase Lacked Fair Notice of the Commission's Position on Staking Services As Securities Offerings.

The fair notice issues implicated by the Staff's contemplated charges against Coinbase for staking present with equal force because the Commission provided no notice at all about its position on whether the securities laws apply to staking services until it filed a complaint against Kraken on February 9, 2023.[73] Prior to February 2023, the Commission itself had not made a single statement on staking, despite hearing from industry participants (including Coinbase) about their legal analyses of staking services since at least 2019. At most, Chair Gensler made a brief, passing comment to the media in the fall of 2021 regarding potential future enforcement actions against unspecified "staking products."[74] But one media statement by a member of the Commission is not policy guidance, and it does not constitute fair notice, such that market participants should reasonably be expected to understand what—if any—staking-related activities it views as violative of securities law.

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[72] *See Oversight of the SEC: Hearing Before the Fin. Serv. Comm.*, 118th Cong. (Apr. 18, 2023) (Chairman McHenry stating to Chair Gensler, "You have failed to provide clarity on how digital asset firms should adhere. Your punishing these firms for failing to apply to these laws, without knowing how they apply . . . regulation by enforcement is not sustainable" and "let me be clear, [this Congress's] goal is to make law and we expect you to play a constructive role in that process.").

[73] Compl., *SEC* v. *Payward Ventures, Inc.*, No. 23-cv-588 (N.D. Cal. Feb. 9, 2023), ECF No. 1.

[74] *Transcript: The Path Forward: Cryptocurrency with Gary Gensler*, Wash. Post (Sept. 21, 2021), https://www.washingtonpost.com/washington-post-live/2021/09/21/transcript-path-forward-cryptocurrency-with-gary-gensler/.

The lack of fair notice is underscored by Chair Gensler's recent statements that all staking services must be registered, based entirely on the settlement of a single enforcement action focused on one platform's idiosyncratic staking product. There, the Chair stated that Kraken's settlement "should make clear to the marketplace that staking-as-a-service providers must register."[75] But Kraken's staking services look nothing like Coinbase's, and that settled action provided no notice to Coinbase as to whether *its* staking services would be viewed as violating securities law. When asked whether recent changes to Coinbase's staking program altered the Staff's securities law analysis, the Staff responded that it had "not reached a view."

The Chair's directive that staking service providers must register is also illusory because there is no actual path to registration for any staking services. Shortly after the Kraken settlement, Coinbase submitted a comment to the Commission seeking guidance on which staking services would need to be registered, and if so, how to register.[76] The Commission has not responded.

c. Coinbase Lacked Fair Notice of the Commission's Position on Clearing Agency Requirements for Custodial Digital Asset Platforms.

Coinbase also did not have fair notice that the Staff would seek to charge the company as an unregistered clearing agency. The Commission provided no indication that it believed clearing agency regulations apply to custodial digital asset platforms that perform certain automated settlement functions until it filed a complaint against Beaxy on March 29, 2023—the first of its kind.[77]

The Chair's public statements that custody and retail-facing trading services should be disaggregated do not provide fair notice of the Commission's newly adopted position—unsupported by law—on the illegality of clearing-related activities by digital asset platforms. The Exchange Act provides a tailored and precise "clearing agency" definition, centered on firms that act as central

[75] *Kraken to Discontinue Unregistered Offer & Sale of Crypto Asset Staking-As-A-Service Program & Pay $30 Million to Settle SEC Charges*, SEC (Feb. 9, 2023), https://www.sec.gov/news/press-release/2023-25.

[76] Coinbase, *Mar. 20, 2023 Petition for Rulemaking*, *supra* n.36.

[77] Compl., *SEC* v. *Beaxy Digital, Ltd.*, No. 23-cv-1962 (N.D. Ill. Mar. 29, 2023), ECF No. 1.

counterparties, central securities depositories, or facilities that allow for comparison of data respecting the terms of settlement of securities transactions, to reduce the number of settlements of securities transactions, or for the allocation of securities settlement responsibilities. 15 U.S.C. § 78c(a)(23)(A). Coinbase today provides none of these services and could not have foreseen the Commission's attempt to apply this requirement to the digital asset industry. Rather, Coinbase performs the same settlement-related activities that it discussed in detail with the Commission for years, including during the public listing process.

d. Coinbase Lacked Fair Notice of the Commission's Position on Broker Registration for Self-Custody Wallets.

The same fair notice issues are present with respect to the Staff's contemplated Wallet-related charges. Coinbase is not aware of a single statement, rule, or guidance issued by the Commission or the Staff regarding the applicability of broker requirements to self-custody wallet software like Wallet. No court will bless attempts to charge Coinbase, on the basis that it should have "divine[d] the agency's interpretations in advance." *Christopher*, 567 U.S. at 159.

This is the first time Coinbase has heard of an issue regarding Wallet. Wallet has been available since at least 2018, was referenced six times in the effective S-1, and since April 2021, has been discussed in at least 14 SEC filings. The Commission's "conspicuous inaction" renders this fair notice violation particularly "acute." *Id.* at 158.

3. Equitable Defenses Should Further Bar This Action from Proceeding.

If the Commission were to proceed with litigation, despite the extensive record of the Commission's inaction, conflicting positions, engagement with Coinbase in the S-1 process, and refusal to provide clarity, Coinbase would have strong equitable arguments to bar an enforcement action from proceeding—on equitable estoppel grounds and because of the Commission's "unclean hands." *See SEC* v. *Rayat*, 2021 WL 4868590, at *3 (S.D.N.Y. Oct. 18, 2021) ("The SEC agrees that the defenses of equitable estoppel and unclean hands are not categorically unavailable against the government.").

The federal doctrine of equitable estoppel applies when "the enforcement of the rights of one party would work an injustice upon the other party due to the latter's justifiable reliance upon the former's words or conduct." *Kosakow* v. *New Rochelle Radiology Assocs.*, 274 F.3d 706, 725 (2d Cir. 2001). The elements of the defense include proof that the plaintiff made a misrepresentation of fact to the defendant with reason to believe that the defendant would rely on it; that the defendant did reasonably rely upon it; and that the defendant was harmed by the reliance. *Id.* Ordinarily, whether the defense applies is a question of fact. *Id.* It is unnecessary for the defendant to show that the plaintiff intended to deceive the defendant when it made the representation. *Id.* at 726; *see also SEC* v. *KPMG, LLC*, 2003 WL 21976733, at *2 (S.D.N.Y. Aug. 20, 2003) (an estoppel defense can be raised against the Government in circumstances where the Government's actions are "inconsistent with 'the minimum standard of decency, honor, and reliability' which citizens have a right to expect from their Government"). Recognizing the need to deter government abuses, an unclean hands defense is permitted in circumstances "where it appears that the government may have engaged in outrageous or unconstitutional activity." *SEC* v. *Am. Growth Funding II, LLC*, 2016 WL 8314623, at *3 (S.D.N.Y. Dec. 30, 2016).

Here, the Commission misrepresented its position when it said that it did not view certain digital assets as securities, and when it said it lacked authority to regulate digital asset platforms. Coinbase reasonably relied on such representations (and the Commission's continued silence) by continuing and expanding its business, including by devoting substantial resources to engaging with the Commission prior to, during, and after its public listing process. And Coinbase has been significantly harmed by such reliance; the Commission would now seek to shut down core parts of its business after allowing it to become a public company offering the same services it does today. The harm is compounded because Coinbase has not only sought clarity from the Commission to ensure

that it was adhering to the limited existing guidance, but also has substantially limited the types of products and services it makes available to its users.[78]

An enforcement action should also be barred because Chair Gensler misrepresented his position when he said to "come in and register," even though registration of any part of Coinbase's business was simultaneously foreclosed by the Commission. Members of Congress explicitly recognized this "misrepresentation" just this week.[79] Coinbase relied on the Chair's statement and continued to provide the Commission with extensive information about its business and securities law analyses in its ongoing efforts to register. Yet, now, the Commission is trying to use this information to substantially extinguish the same core business it allowed to go public just two years ago.

Unlike other market participants that do not have the same record of substantial compliance and engagement as Coinbase—and have not gone through an expansive S-1 review process—Coinbase and its investors will be uniquely harmed by litigation. The Commission's vacillation, conflicting statements, omissions, and silence collectively fail to meet the minimum standards of fairness and reliability that citizens "have a right to expect from their Government." *KPMG*, 2003 WL 21976733, at *2.

D. An Enforcement Action Is Imprudent When There Are Alternative Paths Available.

Coinbase has never wanted litigation with the Commission. But it will litigate and exhaust all

[78] U.S. retail adoption of cryptocurrency has increased from 8.3% in 2021 to 20% in 2023. But compliance-driven companies like Coinbase have had their growth slowed by the lack of regulatory clarity in the United States, especially from the Commission. Coinbase has declined to offer a number of products and services that its users have requested—such as certain lending, derivatives trading, and staking products—because there is no path to offer them in the U.S. today. And in Q4 2022, Coinbase's U.S. volume meaningfully decreased with some of its users likely opting instead to trade on unregulated offshore competitors' platforms that to date appear not to have been the focus of the Commission's attention.

[79] *See* Letter from Patrick McHenry (Chair of Comm. on Fin. Servs.) *et al*. to Chair Gary Gensler (Apr. 18, 2023), https://financialservices.house.gov/uploadedfiles/2023-04-17_all_fsc_gop_letter_to_sec_on_nse_registration_final.pdf ("Without clear rules of the road, your push for firms to 'come in and register' is a willful misrepresentation of the SEC's non-existent registration process. The only entity to blame for the lack of registrants is the SEC itself. The SEC should take this opportunity to work with Congress to ensure innovators and investors have the regulatory clarity and protections that they deserve.")

available avenues, if forced to do so by the Commission. Alternative paths nonetheless remain available, preferable, and better for the Commission and Coinbase. If the Commission believes that certain digital assets are securities, or certain parts of Coinbase's business need to be registered, Coinbase continues to welcome that dialogue. The Commission could respond to Coinbase's request for rulemaking (and the 140 questions therein) or initiate its own. If the Commission believes that Coinbase should register a securities trading platform, Coinbase remains open to that discussion, as it has been for the last four years. And if the Commission wants to consider how issuer disclosure, brokerage, custody, clearing, and related issues can work in the digital asset securities markets, Coinbase remains available to discuss these issues—and is keen to do so—at any time. These issues need not, and should not, be addressed before a court.

II. The Staff's Enforcement Action Would Fail on the Merits Because Coinbase Does Not List, Clear, or Effect Trading in Securities.

Because the Staff has not identified which assets it thinks are securities, Coinbase finds itself in the position of trying to respond to "some unspecified issue" with some unidentified assets, in order to "somehow . . . prove a negative"—namely that Coinbase "is not violating registration requirements."[80] As a federal judge recently observed: "I don't know how any party could possibly be expected to address the SEC's comments with the limited guidance the SEC has provided."[81]

In litigation, the Commission will not be able to rely on vague generalizations. To convince a court to order Coinbase to stop listing any particular digital asset, the Commission will need to prove that transactions in that specific digital asset are securities transactions. It will need to do that for every asset that it chooses to allege as a security—no court will allow the Commission to shut down substantial portions of Coinbase's business through examples.[82] This will be extremely challenging

[80] Tr. of Hr'g at 44, *In re Voyager Dig. Holdings*, 1-22-bk-10943 (Bankr. S.D.N.Y. Mar. 7, 2023), ECF No. 1172.

[81] *Id.* at 47.

[82] *See id.* at 27–28 ("You know, when I have a regulator who's charged with protecting investors, they either think there's an issue or there's not. I expect them to come in and tell me there is or there isn't. I

for the Commission because at great cost to its business, Coinbase does not list securities and rejects some 90% of the assets that it reviews (even though many of these trade on other platforms). Coinbase has a robust listing process through which it has already screened all of the assets it lists against these criteria, and has already done the analysis to conclude they are not securities under applicable law.[83] Moreover, because Coinbase disclosed that process to the Commission on multiple occasions, without ever receiving a response, the Commission will have to confront in such litigation its own failure to provide the guidance Coinbase sought.

A. Coinbase Does Not List, Clear, or Effect Trading in Securities.

The Securities and Exchange Acts define a "security" as including a laundry list of financial instruments such as notes, stocks, bonds, and investment contracts. *See* 15 U.S.C. § 77b(a)(1); *id.* § 78c(a)(10). Each of these instruments confers upon the holder some enforceable legal right (such as to receive dividends, interest, or principal payments) against an identifiable party. Because digital assets do not fit into another enumerated category, their status typically turns on whether they are "investment contracts"—a term "undefined by the Securities Act or by relevant legislative reports" but common under 1930s state blue-sky laws. *Howey*, 328 U.S. at 298. Under *Howey*, an "investment contract" is any "contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party." *Id.* at 298–99.

As a threshold matter, digital assets are computer code that operate on blockchain technology. They do not necessarily memorialize any contractual relationship with an issuer or other party, or

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don't expect them to come in here and say the Debtor should prove the impossible. The Debtor should somehow, without any guidance from you as to what issues you think the Debtor needs to prove, the Debtor should somehow prove that nothing that's going on here raises an issue under the securities laws without even a contention by anybody in the room, or at least not from you, that what the Debtor is doing does violate the securities laws. I just don't get how that's proper or how you would expect anybody to be able to comply with what you're asking.")

[83] In 2022 alone, Coinbase declined to list over 1,000 assets that went through its review process.

inherently constitute securities. Courts have consistently found that the "object" of an investment contract is distinguishable from the investment contract—each digital asset "all by itself is not a security, just as the orange groves in *Howey* were not."[84] *See, e.g.*, *SEC* v. *ETS Payphones, Inc.*, 408 F.3d 727, 732–33 (11th Cir. 2005) (scheme involving sale-leaseback of payphones was an investment contract, without suggesting that the payphones were securities); *Kemmerer* v. *Weaver*, 445 F.2d 76, 79–80 (7th Cir. 1971) (sales of "live breeding beavers" plus service agreements for their care was an investment contract, without suggesting that the beavers themselves were securities). Thus, digital assets implicate the securities laws only when sold as part of an ongoing "investment contract, transaction or scheme." *Howey*, 328 U.S. at 298–99.

Unlike for traditional securities like stocks which represent ongoing claims against an issuer, for the Commission to prevail, it will need to show that particular digital assets are sold as part of investment contracts *when traded on Coinbase*, even though none of the asset issuers, their affiliates, or underwriters are in ongoing contractual privity with the purchasers of those digital assets. *See United States* v. *Leonard*, 529 F.3d 83, 89 (2d Cir. 2008) (applying *Howey* to "relatively new" types of investments requires a "case-by-case analysis"). In its recent *Bittrex* complaint, the Commission alleged in a conclusory manner that certain assets were continually "offered" as an investment contract, years after their initial offerings, even where management of the associated protocol had changed or was distributed to users.[85] But no court would allow the Commission to assume these are "ongoing" investment schemes without proving as much on an individualized basis.[86] *See Marine Bank* v. *Weaver*, 455 U.S. 551, 559 n.9 (1982) (rejecting that a certificate of deposit was "somehow

[84] *See* Hinman, *supra* n.63.

[85] *See Bittrex* Compl. ¶¶ 143–45, 155 (alleging OMG "offered and sold as an investment contract" for 7 years since ICO, even though "management of the OMG Network continued to change hands"); *id.* ¶¶ 162–63 (same for DASH, 9 years after ICO, even though protocol is "run by a subset of its users"); *id.* ¶¶ 173–79, 195–99, 205–11, 220–22 (same for ALGO, TKN, NGC, and IHT, 4 to 6 years after ICOs).

[86] *See* Lewis Cohen *et al.*, *The Ineluctable Modality of Securities Law: Why Fungible Crypto Assets Are Not Securities*, DLx Law, 55–58, 96–97 (Nov. 10, 2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4282385.

transformed into a security when it was pledged"). The Commission will be unable to do so for the following reasons.

First, for there to be an investment contract, there needs to be one or more contracts with the issuer. The plain language of the statutes make clear this requirement. *See* 15 U.S.C. § 77b(a)(1); *id.* §§ 78c(a)(8)–(10); *see also Howey*, 328 U.S. at 300 (explaining that the "contract" requirement in that case was readily satisfied by multiple agreements between the promoter and his purchasers). None of these assets are being traded on Coinbase in conjunction with any ongoing contractual privity between issuers and Coinbase's users.

Prior cases applying *Howey* to digital assets have overwhelmingly targeted digital asset issuers, not exchanges. In these cases, the Commission has charged the issuer or promoter of a digital asset with raising capital from investors in exchange for digital assets, whose value would be based on the success of the issuer or promoter's business. *See, e.g.*, *SEC* v. *Telegram Grp. Inc*., 448 F. Supp. 3d 352 (S.D.N.Y. 2020); *SEC* v. *Kik Interactive Inc*., 492 F. Supp. 3d 169 (S.D.N.Y. 2020); *SEC* v. *NAC Found.*, *LLC*, 512 F. Supp. 3d 988 (N.D. Cal. 2021). It was argued that the issuer entered into an "implicit" contract with the initial buyer, at a specific point in time, to develop the business in exchange for funding. *Telegram*, 448 F. Supp. 3d at 358–59; *see id.* at 371, 379 (finding that the "appropriate point at which to evaluate the scheme" was at the time of sale to initial purchasers, who had investment intent at that time and thus were underwriters of primary offering); *Kik*, 492 F. Supp. 3d at 180–82 (issuer "promised" to create an ecosystem, as part of "a single effort by [the issuer] to raise capital to deploy [its protocol]"). No such legal theory will be available in a case against Coinbase because, again, no issuer can raise capital from users trading on Coinbase.

Second, even if each asset issuer were engaged in ongoing marketing efforts at the time of each transaction on Coinbase, and even if those ongoing marketing efforts were somehow viewed as sufficient to establish an implicit investment contract (*e.g.*, as a scheme), it does not follow that secondary market transactions implicate that investment contract. To the contrary, the secondary market transactions on Coinbase fail all four of the *Howey* prongs.

Investment of Money. Secondary market purchasers do not invest money in the issuer's enterprise. To satisfy *Howey*'s "investment of money" element, courts specifically require "the investor [to] commit his assets to *the enterprise* in such a manner as to subject himself to financial loss." *SEC* v. *Rubera*, 350 F.3d 1084, 1090 (9th Cir. 2003). But in a secondary market transaction, the transaction is simply between two market participants trading on the platform; any "investment of money" does not go to the issuer or promoter, but to the previous owner of the digital asset.

Common Enterprise. There is also no common enterprise present in the secondary trading on Coinbase, which requires that there be "either an enterprise common to the investor and the seller, promoter or some third party (vertical commonality) or an enterprise common to a group of investors (horizontal commonality)." *Hocking*, 885 F.2d at 1455. Horizontal commonality does not exist here because secondary-market purchasers never "pool their investments together." *NAC Found.*, 512 F. Supp. 3d at 996. Vertical commonality is also lacking for secondary market trading, particularly where the promoter's initial protocol development efforts are complete, because there is no "direct relation between the success or failure of the promoter and that of his investors." *Mordaunt* v. *Incomo*, 686 F.2d 815, 817 (9th Cir. 1982). Users of the tokens may sustain profits or losses based on market forces and the timing of their individual purchasing decisions, regardless of the promoter's success or failure.

Expectation of Profits. For the many digital assets listed on Coinbase's spot exchange that have consumptive utility or are stablecoins, *Howey*'s "expectation of profit" prong is also not satisfied. The securities laws do not apply "when a purchaser is motivated by a desire to use or consume the item purchased." *United Hous. Found., Inc.* v. *Forman*, 421 U.S. 837, 852–53 (1975). Even if some digital asset holders may hope that their assets appreciate in value, that is not dispositive.[87] In this regard, digital assets are no different from tradable commodities that have both consumptive and investment value, like gold.

[87] *See SEC* v. *Belmont Reid & Co., Inc.*, 794 F.2d 1388, 1391 (9th Cir. 1986) (holding that even though purchasers of gold coins were anticipating their purchases to appreciate in value and were "speculating in the world gold market," the gold coins were nonetheless not securities).

Efforts of Others. There are no "efforts of others" in secondary market transactions, particularly where the promoter's initial protocol development efforts are already complete. To satisfy *Howey*'s "efforts of others" prong, investors must anticipate profits from the "undeniably significant" efforts of others, namely *"*those essential *managerial efforts* which affect the failure or success of the enterprise." *SEC* v. *Glenn W. Turner Enters.*, 474 F.2d 476, 482 (9th Cir. 1973) (emphasis added). An investor entitled to receive a share of an enterprise's profits—whether corporate dividends, or proceeds from the harvest and sale of oranges—clearly relies on management's business acumen. In the context of an initial coin offering for a digital asset with no current utility, purchasers arguably "view[] his or her prospective trading success as a function of the [promoter's] efforts." *NAC Found.*, 512 F. Supp. 3d at 997. But secondary markets for established digital assets are different. When a digital asset's protocol becomes functional or its governance is distributed among unaffiliated parties, there may be few "managerial efforts" to speak of. If the digital asset's original promoter dissolves or goes bankrupt, there may be no "managers" at all, but the digital asset may remain functional.

Further, Coinbase's efforts to establish a secondary market for the assets do not transform those assets into securities. Courts have consistently held that when the value of an asset is determined by pre-existing secondary markets, rather than the efforts of a promoter or issuer, the efforts of others prong is not satisfied.[88] Many commodities trade in secondary markets without constituting securities. And, as with those commodities, many of the assets listed on Coinbase were first traded in secondary markets years ago.

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[88] *See, e.g.*, *Noa* v. *Key Futures, Inc.*, 638 F.2d 77, 79 (9th Cir. 1980) (certificates of ownership for silver bars warehoused by issuer who advertised it "would buy the silver back at any time at the spot price" were not investment contracts because the profits depended on the silver market not the seller's efforts); *Belmont Reid*, 794 F.2d at 1391 (contracts for sale of gold coins sold to raise capital were not investment contracts, in part, because the coin buyer's profits "depended upon the fluctuations of the gold market," not the seller, thus failing to satisfy the efforts of *Howey*'s other prong); *Grenader* v. *Spitz*, 537 F.2d 612, 619 (2d Cir. 1976) (holding that housing coop shares were not investment contracts, in part, because their value "depend[ed] upon the general housing market, the status of the neighborhood and the availability of credit" rather than the seller's efforts); *Lehman Bros. Com. Corp.* v. *Minmetals Int'l NonFerrous Metals Trading Co.*, 179 F. Supp. 2d 159, 164 (S.D.N.Y. 2001) (holding no investment contract where "any gain likely would result in large part from market movements, not from capital appreciation due to Lehman's efforts.").

Coinbase's efforts to establish a secondary digital asset market are markedly different from situations where courts have found secondary market-related activities to give rise to investment contracts. For example, in *Gary Plastic Packaging Corp.* v. *Merrill Lynch Pierce*, *Fenner & Smith, Inc.*, the court held that an investment contract was present because Merrill Lynch possessed "significant economic power" with respect to relevant transactions. 756 F.2d 230, 240 (2d Cir. 1985). The court explained that Merrill Lynch was "engaged in activity that is significantly greater than that of an ordinary broker or sales agent," including negotiating with certificate of deposit (CD) issuers on what rates they offer, and marketing the CDs to investors like an underwriter. *Id.* Additionally, the court pointed to two primary facts that supported its conclusion that "customers rely on the skill and financial stability of Merrill Lynch." *Id.* First, "resale in the secondary market created and maintained by Merrill Lynch [was] crucial to the investor . . . [because] in the event Merrill Lynch failed to maintain the promised secondary market, an investor would have considerable difficulty liquidating a CD." *Id.* And second, investors "rel[y] on Merrill Lynch's implicit promise to maintain its marketing efforts," because "[i]f Merrill Lynch were not an influential and well-known participant in the marketplace, the CD Program would not be viable." *Id.* at 240–41.

Unlike Merrill Lynch in *Gary Plastic*, Coinbase does not negotiate with asset issuers about the economic attributes of the assets that will be sold or act as an underwriter with respect to the distribution of those assets. Nor do users depend on Coinbase for a secondary trading market for those assets. Many of the assets listed on Coinbase trade on at least one (often multiple) other digital asset spot exchanges available to U.S. users.[89] Coinbase could step away, and users would easily continue to engage in the same exact activities on several other platforms.

B. Coinbase Wallet Is Not a Broker.

The Staff alleges that Coinbase Wallet is operating as an unregistered broker in violation of Section 15(a) of the Exchange Act. But Wallet is software, not a broker, and does not perform any of

[89] As of 2023, more than 170 assets listed on Coinbase were also listed on one or more U.S. digital asset trading platforms.

the customary activities that would be required for the Commission to prove that Wallet is a broker. Further, the Commission has been provided with extensive information about Wallet and its functionality, including during Coinbase's S-1 process, and in at least 14 of Coinbase's SEC filings since April 2021, and it has never raised concerns until now.

1. Overview of Coinbase Wallet.

Coinbase Wallet is free software made available by Coinbase in the form of a mobile application and a browser extension. The software provides a graphical user interface that allows a user to self-custody her digital assets by storing her private keys on her mobile device or personal computer. Those private keys are controlled solely by the user, and Wallet users' assets are never within Coinbase's custody or control. Users can also connect their Wallets to third-party decentralized protocols and can send, receive, and swap digital assets through those third-party protocols. Users solely control which activities they engage in with respect to third-party protocols. Wallet's core role is to translate user instructions (entered through the Wallet interface) into code that can be processed by those protocols. Coinbase does not earn fees on transactions conducted through Wallet.[90]

2. Coinbase Wallet Is a Software Tool, Not a Broker.

The Exchange Act defines "broker" as "any person engaged in the business of effecting transactions in securities for the account of others." 15 U.S.C. § 78c(a)(4). Thus, as a threshold matter, Wallet could only be a broker if it performs broker functions with respect to securities. Because Wallet users can only use Wallet to interface with secondary markets, the Staff's proposed Wallet claims relating to Wallet will fail for the same reasons: Secondary market transactions do not involve investment contracts, and thus do not involve securities. Without proving that specific transactions

[90] Coinbase historically collected a flat 1% administrative fee when users swapped one digital asset for another digital asset using Wallet's internal "Swap" functionality, which allows users to connect to the third-party application programming interface 0x, which in turn connects the user to various decentralized exchanges. Other than this administrative swap fee, any transactional "gas" or "network" fees charged to users for transferring assets in their wallet were paid to the relevant blockchain networks, not to Coinbase. Coinbase did not receive any other fees for Wallet users' activities.

through Wallet constitute securities—which it cannot do—the Commission cannot claim that Wallet is a securities broker.[91]

But even if Wallet had been used to transact in securities, categorizing Wallet as a broker also would be wrong as a matter of fact and law. "To demonstrate that someone is acting as a broker, the SEC is required to show a regularity of participation in securities transactions at key points in the chain of distribution." *SEC* v. *StratoComm Corp.*, 2 F. Supp. 3d 240, 262 (N.D.N.Y. 2014), *aff'd*, 652 F. App'x 35 (2d Cir. 2016). The broker determination is fact specific, and based on the totality of the circumstances—meeting one factor is not dispositive.[92]

In evaluating whether someone acted as a broker, courts look to a list of non-exclusive factors first announced in *SEC* v. *Hansen*, including "whether that person 1) is an employee of the issuer; 2) received commissions as opposed to a salary; 3) is selling, or previously sold, the securities of other issuers; 4) is involved in negotiations between the issuer and the investor; 5) makes valuations as to the merits of the investment or gives advice; and 6) is an active rather than passive finder of investors." 1984 WL 2413, at *10. In the past, the Commission has also considered the factors set forth in *Hansen* in evaluating whether an entity is a broker.[93] Wallet does not satisfy these factors. It is not involved in negotiations between the issuer and purchaser, does not make any financial valuations as to an investment's merits, and never acts as a "finder" of investors.[94] As for "transaction-based

[91] Coinbase is not aware of a single statement, rule or guidance issued by the Commission or the Staff regarding the applicability of broker-dealer requirements to self-custody wallets like Wallet, which raises serious concerns, including with respect to fair notice. *See supra* p. 39.

[92] *See, e.g.*, *SEC* v. *RMR Asset Mgmt. Co.*, 479 F. Supp. 3d 923, 926 (S.D. Cal. 2020) (applying a "totality of the circumstances" approach to determining if person was a broker-dealer); *U.S. Pension Trust Corp.*, 2009 WL 2365702, at *9 (finding summary judgment inappropriate even though defendants actively solicited investors, received transaction-based compensation, and regularly participated in securities transactions).

[93] *See, e.g.*, *BondGlobe, Inc.*, SEC Denial of No-Action Request, 2001 WL 103418, at *3 (Feb. 6, 2001) (citing *SEC* v. *Zubkis*, 2000 WL 218393, at *9 (S.D.N.Y. Feb. 23, 2000)).

[94] *See* Notice of Proposed Exemptive Order Granting Conditional Exemption from the Broker Registration Requirements of Section 15(a) of the Securities Exchange Act of 1934 for Certain Activities of Finders,

compensation," Coinbase's prior receipt of a 1% administrative fee when customers used the "Wallet Swap" function—which is no longer the practice—does not change the outcome of the analysis. Multiple courts have held that transaction-based compensation is not sufficient to prove broker activity, and should "not be weighted so heavily so as to subsume" other factors in the broker-dealer analysis.[95] *Landegger* v. *Cohen*, 2013 WL 5444052, at *6 (D. Colo. Sept. 30, 2013).

Courts have also expanded upon the *Hansen* factors, considering activities such as "handling customer funds and securities, participating in the order-taking or order-routing process . . . , extending or arranging for the extension of credit in connection with a securities transaction, . . . analyzing the financial needs of an issuer, recommending or designing financing methods, discussing details of securities transactions, and recommending an investment." *SEC* v. *Collyard*, 154 F. Supp. 3d 781, 788-89 (D. Minn. 2015), *aff'd in part, vacated in part on other grounds*, 861 F.3d 760 (8th Cir. 2017). Wallet does none of those things. Wallet is asset-agnostic software. Unlike typical broker applications, Wallet was not purpose-built for securities transactions and does not perform order routing or execution services or custody customer assets.[96] Users retain custody of their digital assets and choose where, when, and how to trade them, without direction by Coinbase.

Exchange Act Rel. No. 90112, 2 (Oct. 7, 2020) (defining a "finders" as networks of angel investors "who may identify and in certain circumstances solicit potential investors").

[95] *See Found. Ventures, LLC* v. *F2G, Ltd.*, 2010 WL 3187294, at *7 (S.D.N.Y. Aug. 11, 2010) (organization not a broker because it was "not employed by [the issuer], was supposed to receive commission rather than a salary," and did not "make[] valuations or give[] advice regarding the merits of an investment," "participate[] in negotiations between the issuer and the investor," or sell other investors' securities); *Jobanputra* v. *Kim*, 2022 WL 4538201, at *9 (S.D.N.Y. Sept. 28, 2022) (although organization received transaction-based compensation, gave investment advice, and may have participated in negotiations, it was not a broker); *SEC* v. *M&A West, Inc.*, 2005 WL 1514101, at *9 (N.D. Cal. 2005) (although defendant drafted documents, facilitated securities transactions, and received payment upon transaction's completion, it did not have assets entrusted to it and was not authorized to enter transactions "for the account of others," so was not a broker); *SEC* v. *Kramer*, 778 F. Supp. 2d 1320, 1336, 1339 (M.D. Fla. 2011) (despite receiving transaction-based compensation, defendant was not a broker because he did not participate in the negotiations, discuss transactions' details, promote investments, or analyze the parties' financial status).

[96] *See, e.g.*, Robinhood, https://robinhood.com/us/en/; Vanguard, https://investor.vanguard.com/corporate-portal/.

In short, Wallet does nothing more than make available passive software that provides users a digital asset self-custody solution through which they may engage in activities of their choosing without direction or recommendation by Coinbase—this is wholly insufficient to characterize Wallet as a broker under applicable law.

C. Coinbase's Staking Services Do Not Constitute a Securities Offering.

The Staff contends that Coinbase's staking services constitute an unregistered securities offering in violation of Sections 5(a) and (c) of the Securities Act. This argument will fail because Coinbase's staking-related activities involve the mere provision of IT services that do not satisfy any prong of the *Howey* test for an investment contract.

1. Overview of Coinbase's Staking Services.

Coinbase launched retail staking services for eligible users in November 2019 with Tezos (XTZ); users can also stake Cosmos (ATOM) (September 2020); Ether (ETH) (April 2021); Cardano (ADA) (March 2022); and Solana (SOL) (June 2022).

Coinbase does not employ any discretion as to which assets to stake and when to stake them; those decisions are made by the users themselves. Coinbase simply provides users with IT services—access to servers running publicly available open-source software, reliable internet access, and electricity. Like any responsible IT service provider, Coinbase uses certain proprietary systems and technical measures to avoid the risk of security breaches or operational errors. Should Coinbase experience a technology failure, attributable to its own acts or omissions, that results in a "slashing" penalty from a digital asset protocol, Coinbase has contractually committed in its User Agreement to replace any assets lost to such events. This is no different from any other IT provider indemnifying its customers from losses it causes. Notably, Coinbase has never had a slashing event occur.

Coinbase's staking services are built on top of Coinbase's services as a digital asset custodian. Users are the exclusive owners of their assets and the assets never become the property of Coinbase. Consistent with Coinbase's User Agreement and UCC Article 8, assets held by Coinbase are not

subject to the claims of its general creditors.[97] A user's decision to stake has no effect on a customer's property interests.[98]

Users can unstake assets at any time, subject to protocol-imposed waiting periods (which range from days to weeks),[99] and Coinbase's processing time. A Coinbase user who wishes to stake or unstake.[100] ADA, ATOM, SOL, and XTZ can submit such requests via the Coinbase app or website, and Coinbase will carry out the necessary blockchain operations.[101]

When a protocol distributes rewards, Coinbase passes through those rewards in proportion to the amount of the users' staked tokens, minus Coinbase's disclosed, flat-percentage commission fee.[102] Because all rewards rates are set by the protocol, a user will earn the same gross rewards whether she

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[97] *See* Coinbase, *Coinbase User Agreement*, § 2.7.1 (Apr. 13, 2023), https://www.coinbase.com/legal/user_agreement/united_states ("Title to Supported Digital Assets shall at all times remain with [the customer] and shall not transfer to Coinbase."); *see also* UCC § 8-503(a).

[98] *Coinbase User Agreement*, *supra* n.86, at App'x. 4, § 3.1.1 ("This instruction to stake your digital assets does not affect the ownership of [the customer's] digital assets in any way.").

[99] ETH staking is different—as of April 12, the Ethereum protocol now allows for unstaking, but unstakers need to wait on a queue to unstake.

[100] Historically, for assets other than ETH, Coinbase maintained a reserve of unstaked assets from among users whose assets were eligible for staking, which varied by asset and was based on the underlying protocol's unbonding period. This practice allowed Coinbase to avoid unnecessary staking and unstaking operations by monitoring aggregate inflows and outflows over a multi-day period and, where possible, provide some users with faster liquidity. Coinbase, however, never advertised or promised faster liquidity to users. Coinbase never used this reserve for anything other than providing faster liquidity where possible, *i.e.*, Coinbase never used the reserve for lending, borrowing, trading, or similar activity designed to earn profits. In any event, Coinbase discontinued this practice and now enforces each protocol's unbonding periods for its users without exception; all assets that users designate for staking are staked and there are no longer liquidity reserves.

[101] Historically, for ADA, ATOM, SOL, and XTZ, Coinbase retail users that held the minimum balances were enrolled automatically to receive staking rewards but could opt out at any time; users were able to stake all of a particular token, or none. Those practices were discontinued on March 22, 2023.

[102] Retail users who elect to stake their assets through Coinbase's service pay Coinbase a flat percentage commission—typically 25% or 35%, depending on the token—on any rewards the users generate by participating in the proof-of-stake protocol. Coinbase One subscribers pay a 15% flat commission for staking of some assets (referred to as a "boosted reward"). Coinbase's flat percentage commission broadly covers Coinbase's costs in running the staking service, plus a profit for providing the service—just like any other technology service provider, *e.g.*, "cloud" service providers that manage all-in technology costs for users on an aggregate basis.

stakes with Coinbase, stakes on her own, or stakes with another pass-through staking provider. Even when multiple users' assets are pooled for staking, none of those users will achieve higher expected rewards, as rewards are split *pro rata* as compared to what they could earn by staking on their own.

2. Coinbase's Staking Services Are Not an Investment Contract.

Coinbase's retail staking services fail all four prongs of the *Howey* test.

a. There Is No Investment of Money.

The Staff contends that Coinbase's staking program involves the "investment of money" because users assets are "locked in" to participate. But users make no "investment of money" into Coinbase's retail staking program. To satisfy this element, courts require "the investor [to] commit his assets to the enterprise in such a manner as to subject himself to financial loss." *Rubera*, 350 F.3d at 1090. This prong is not met for multiple reasons.

First, Coinbase users who stake retain full ownership over their assets at all times. A user never gives up ownership of the assets to Coinbase, the relevant protocol, or any other party. Coinbase's User Agreement amplifies this point, stating that the "instruction to stake your digital assets does not affect the ownership of your digital assets in any way."[103]

Second, any lockup periods and liquidity risks associated with staking are imposed by the protocol itself, not Coinbase—meaning they are not unique to Coinbase's retail staking program and would be the same for anyone who stakes without using a service provider.

Third, slashing penalties do not amount to a risk of loss under *Howey*. Slashing penalties are dictated by the protocol, not Coinbase. And to the extent that slashing takes place due to an act or omission by Coinbase, Coinbase indemnifies the user—eliminating any risk of "financial loss" for staking through Coinbase. Putting aside this limited contractual obligation to indemnify customers against losses from service outages caused by Coinbase, Coinbase users are exposed to the same risks as they would be if they staked without using a service provider.

[103] *See* Coinbase User Agreement, *supra* n.86 at App'x 4, § 3.1.1.

b. There Is No Common Enterprise.

The Staff contends that Coinbase's staking program constitutes a common enterprise because Coinbase "pools tokens," at one time had maintained liquidity reserves, and provides *pro rata* reward distributions to users less a commission. Coinbase's retail staking services, however, do not satisfy *Howey*'s "common enterprise" prong on any of these bases, and implicate neither horizontal nor vertical commonality.

No Horizontal Commonality. Horizontal commonality is "the tying of each individual investor's fortunes to the fortunes of the other investors by the pooling of assets, usually combined with the pro-rata distribution of profits." *Revak* v. *SEC Realty Corp.*, 18 F.3d 81, 87 (2d Cir. 1994). Some courts have specified that horizontal commonality requires the pooling of investments "and split[ting] the net profits *and losses* in accordance with [the investors'] pro rata investments." *Hocking* v. *Dubois*, 839 F.2d 560, 566 (9th Cir. 1988) (emphasis added), *aff'd in relevant part*, 885 F.2d at 1459 (en banc). There is no horizontal commonality here because there is no tying. A user who stakes with Coinbase earns staking rewards based on payout rates determined by the protocol—not by Coinbase or anything Coinbase does—which would be the same if the user stakes without using a service provider.

The mechanical act of aggregating assets in an omnibus wallet alone does not change this conclusion. Courts considering horizontal commonality focus on the connection between the fortunes of the pooled investors. Simply put, protocol-imposed rewards rates do not change depending on whether there is asset aggregation by a validator node operated by a home staker, by Coinbase, or by a competitor. Nor does the amount of assets staked by a particular node increase the rewards rate per asset—*i.e.*, the protocols Coinbase supports do not pay escalating rewards for staking more assets at a node. Any increased likelihood of a node receiving rewards due to staking more digital assets is offset by the ensuing need to split those rewards *pro rata* among users.

No Vertical Commonality. Vertical commonality can be either broad or strict. Broad vertical commonality requires that "the fortunes of the investors . . . be linked only to the *efforts* of the

promoter," while strict vertical commonality requires that the investor's financial success be tied to the efforts *and success* of the promoter. *Revak*, 18 F.3d at 87–88. There is neither broad nor strict vertical commonality here; Coinbase charges its retail users its flat-percent commission on rewards actually received, which does not link the fortunes of Coinbase and its users. As courts have found, service fees collected "for every consummated transaction" do not satisfy vertical commonality.[104]

c. There Is No Reasonable Expectation of Profits.

Coinbase's retail staking services do not satisfy *Howey*'s "reasonable expectation of profits" prong, which requires an investor to be attracted to the investment based on "the prospects of a return on his investment" rather than "a desire to use or consume the item purchased." *Forman*, 421 U.S. at 852–53.

First, fundamentally, it is not correct to conceptualize staking rewards as a "return" on an asset. Staking rewards are simply the consideration paid to the user by the protocol, in exchange for the user performing validation services—processing and confirming that transactions conform to protocol requirements and are "valid." That is a fee for a service, not a return on investment. An asset holder who provides no validation service receives nothing.

Second, Coinbase's marketing of its retail staking services does not lead users to expect "investment profits." Coinbase describes staking as a means for users to put their tokens to work, *i.e.*, to perform validation assignments for certain protocols.[105] That Coinbase has stated that users can earn rewards through staking, and that the word "yield" is part of the terminology used by the industry

[104] *See, e.g.*, *Marini* v. *Adamo*, 812 F. Supp. 2d 243, 260–61 (E.D.N.Y. 2011) (finding that, in the case of a coin collector selling his coins to a coin dealer, a commission earned at the time of purchase would not support vertical commonality, but a commission earned at the time of ultimate sale to a third party, where the commission would rise or fall depending on the ultimate sale value, would meet vertical commonality, which "hinges on this latter sales-based commission"); *In re J.P. Jeanneret Assocs., Inc.*, 769 F. Supp. 2d 340, 360 (S.D.N.Y. 2011) ("Unlike a stockbroker, who collects a fee for every consummated transaction, [the investment manager's] financial compensation was linked to the fortunes of the investors" because "[i]f profits were not generated in a calendar year, or if the profits did not exceed the preferred return, then [the investment manager] did not receive a performance fee.").

[105] Coinbase, *What Is Staking?*, https://www.coinbase.com/learn/crypto-basics/what-is-staking.

and Coinbase (*i.e.*, APY) does not change this conclusion because those statements merely convey facts about how the protocols operate.

d. Profits Are Not Generated Based on the Efforts of Others.

The Staff contends that users reasonably expect profits from Coinbase's efforts based on public statements about the difficulty of engaging in staking independently and Coinbase's efforts to achieve pooled staking rewards for its users. But the "effort of others" prong requires more: Investors' expected profits must be derived from another's "essential managerial" or entrepreneurial efforts that are "undeniably significant" to the enterprise's success or failure. *Glenn W. Turner Enters.*, 474 F.2d at 482; *see also SEC* v. *Int'l Loan Network, Inc*., 968 F.2d 1304, 1308 (D.C. Cir. 1992). The mere existence of some ministerial third-party involvement is not enough to meet this prong.[106]

Coinbase's retail staking services are not entrepreneurial, managerial, or essential. The user decides which asset to stake and how much, and the relevant blockchain protocol governs which validator nodes receive rewards and the amount of such rewards. Nothing Coinbase does can increase the amount of rewards. All Coinbase does is perform the ministerial service of running publicly available validation software on a reliable, secure server and passing through rewards from the protocol to the user, less a fixed percentage fee, without any increase in expected rewards due to pooling.

CONCLUSION

The Commission's case against Coinbase will fail as a matter of fact and law. Litigation will also expose the deep inequities present in the Commission's dealings with Coinbase, subject the Commission to far-reaching programmatic risk, and, ultimately, harm investors, markets, and market participants in both traditional and digital assets. These risks can be avoided.

[106] *Compare, e.g.*, *SEC* v. *Sneed*, 2021 WL 4202171, at *7 (N.D. Tex. Sept. 10, 2021) (interests in "digital asset mining pools" promising yields of 25-60% were securities because yield would be "derived . . . entirely from the managerial efforts" of promoter), *with Elson* v. *Geiger*, 506 F. Supp. 238, 243 (E.D. Mich. 1980) (land sale where "[t]he return on investment . . . was the lessee's fixed rent payment, which was totally independent of . . . managerial expertise," was not a security).

Coinbase remains ready, willing, and eager to engage collaboratively with the Commission on charting a path forward toward registration and regulation of digital asset securities markets. But it cannot do so without reciprocal engagement from the Commission, and litigation will decimate those efforts.

Dated: New York, New York
April 19, 2023

Respectfully submitted,

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Appendix A –Examples of Coinbase's Engagement with SEC[1]

	Date	Description	Relevant Division(s)/Personnel	Topic(s) Covered
1.	01/18/2018	Meeting	Trading & Markets	Coinbase met with Trading & Markets Staff to discuss possible no-action relief regarding Rule 15c3-3's good control location requirement in connection with its dormant, Commission-registered BD/ATS.
2.	05/23/2018	Meeting	Commissioner Peirce	Coinbase met with Commissioner Peirce.
3.	06/28/2018	Correspondence	FinHub Trading & Markets	Coinbase provided FinHub and Trading & Markets Staff with its legal analyses and outside counsel's legal analyses for four assets it intended to list on the platform "in an attempt to be as transparent as possible" and to "give [the Staff] an opportunity to raise any questions."
4.	08/03/2018	Meeting	FinHub Trading & Markets	Coinbase had a call with FinHub and Trading & Markets Staff to discuss its analysis of certain digital assets for listing on the platform.
5.	10/04/2018	Correspondence	FinHub Trading & Markets	Coinbase proactively reached out to FinHub and Trading & Markets Staff regarding potential new assets for listing and to set up a call to discuss its legal analyses.
6.	10/05/2018	Meeting	FinHub Trading & Markets	Call with FinHub and Trading & Markets Staff regarding potential new assets for listing on Coinbase.
7.	10/09/2018	Correspondence	FinHub Trading & Markets	Coinbase provided FinHub and Trading & Markets Staff with its internal legal analyses for two assets.
8.	10/23/2018	Correspondence	FinHub Trading & Markets	Coinbase provided FinHub and Trading & Markets Staff with internal legal analysis memos for three assets.
9.	02/08/2019	Meeting	FinHub	Coinbase delivered a detailed presentation on its asset listing process, including how Coinbase determines whether an asset may be at risk of being characterized as a security.

[1] This appendix contains a representative set of examples of Coinbase's engagement with the Commission from 2018 through the present. It does not include the full universe of Coinbase's engagement, meetings, or written communications with the Commission, and also does not include the full list of attendees at the listed meetings.

	Date	Description	Relevant Division(s)/Personnel	Topic(s) Covered
10.	02/14/2019	Correspondence	FinHub Trading & Markets	Coinbase provided FinHub and Trading & Markets Staff with a legal analysis memo for an asset listed on its trading platform.
11.	09/26/2019	Meeting	Commissioner Jackson	Coinbase met with Commissioner Jackson.
12.	09/27/2019	Meeting	Commissioner Peirce	Coinbase met with Commissioner Peirce.
13.	12/18/2019	Meeting	FinHub	Coinbase presented on its: (i) spot trading platform, including how customers submit trades and Coinbase's role in those transactions; (ii) digital asset listing process, providing specific examples of Coinbase's relevant legal analyses for certain assets; (iii) staking services; and (iv) upcoming efforts to reactivate its dormant BD/ATS.
14.	01/06/2020	Correspondence	FinHub	As a follow up to the December 18, 2019 meeting, Coinbase submitted written responses to Staff questions regarding staking and validators.
15.	01/10/2020	White Paper	FinHub	Coinbase, together with the Proof of Stake Alliance, submitted a White Paper regarding staking as a service and the relevant securities law analysis.
16.	02/12/2020	Meeting	FinHub	Coinbase, together with the Proof of Stake Alliance, presented on staking and the relevant securities law analysis.
17.	02/20/2020	Meeting	Commissioner Peirce	Coinbase held a meeting with Commissioner Peirce.
18.	07/14/2020	Meeting	Corporation Finance FinHub Investment Management Trading & Markets	Coinbase presented on: (i) an update on its efforts to reactivate its dormant broker-dealer and ATS; (ii) asset listing and legal scores for certain assets made available for trading on Coinbase's spot trading platform; (iii) staking services; (iv) assets made available for staking; and (v) New York Department of Financial Services oversight.
19.	08/17/2020	Meeting	Corporation Finance Enforcement	Coinbase presented: (i) its asset listing philosophy, (ii) a summary of its asset review processes, (iii) details of its

	Date	Description	Relevant Division(s)/Personnel	Topic(s) Covered
			FinHub	securities law review for assets approved to list on its platform, (iv) how listing determinations are made, and (v) specific assets Coinbase listed or planned to list including select questions from the securities law analysis for those assets.
20.	08/20/2020	Meeting	FinHub	Coinbase presented on: (i) its staking services; (ii) assets made available for staking; and (iii) relevant securities law analysis.
21.	09/25/2020	Meeting	Trading & Markets	Coinbase presented on BD/ATS topics and discussed an alternative model—"Model B"—based on the recently published no-action letter. Model B would allow for Coinbase Custody Trust Co. (CCTC) to serve as transfer agent as well as custodian; this plan would also involve transferring tokenized certificates of securities.
22.	10/09/2020	Correspondence	Corporation Finance	Coinbase submitted its first draft S-1 with extensive information about its business operations.
23.	10/16/2020	Meeting	Corporation Finance Trading & Markets	Coinbase discussed the role of CCTC as transfer agent, in connection with its BD/ATS with Trading & Markets and Corporation Finance Staff.
24.	11/20/2020	Call	Trading & Markets	Coinbase discussed whether CCTC's status as a transfer agent in connection with its BD/ATS would give rise to the need to register as a clearing agency.
25.	12/02/2020	Correspondence	Trading & Markets	Coinbase's outside counsel confirmed with an Associate Director in the Division of Trading & Markets that he would support a no-action letter stating that a transfer agent would be a good control location with respect to Rule 15c3-3.
26.	12/07/2020	Correspondence	Corporation Finance	Corporation Finance Staff sent Coinbase a comment letter on the first draft of Coinbase's S-1.
27.	12/17/2020	Meeting	Corporation Finance	Coinbase met with Corporation Finance Staff to discuss the potential issuance of digital asset securities.

	Date	Description	Relevant Division(s)/Personnel	Topic(s) Covered
28.	12/21/2020	Correspondence	Corporation Finance	Coinbase submitted a response letter regarding its S-1 to the Staff with a robust analysis applying each of the *Howey* factors to its staking services.
29.	02/05/2021	Correspondence	Corporation Finance	The Staff sent Coinbase a second comment letter regarding Coinbase's S-1, asking, as relevant, about Coinbase's securities analyses for assets listed on its spot trading platform.
30.	02/12/2021	Correspondence	Corporation Finance	Coinbase submitted a response letter to the Staff regarding its draft S-1, with a detailed response regarding its securities law analyses for digital assets listed on its spot trading platform.
31.	02/29/2021	Meeting	Commissioner Peirce	Coinbase met with Commissioner Peirce to discuss Coinbase's broker-dealers and the digital assets securities market, generally.
32.	03/12/2021	Correspondence	Corporation Finance	The Staff sent Coinbase their final comment letter on Coinbase's S-1.
33.	03/17/2021	Correspondence	Corporation Finance	Coinbase submitted its fourth S-1 to Corporation Finance Staff.
34.	04/01/2021	Notice	Corporation Finance	The Commission declared Coinbase's S-1 effective.
35.	04/12/2021	Meeting	FinHub Intergovernmental Affairs Investment Management Office of Legislative and	Coinbase presented to SEC Staff on the Coinbase Lend Program, which would allow Coinbase customers to loan their eligible digital currencies to Coinbase in exchange for rewards.
36.	04/16/2021	Meeting	Corporation Finance FinHub Investment Management Trading & Markets	Coinbase presented to the Staff on its plan for facilitating the trading of digital asset securities using a BD/ATS model, the contemplated registration of CCTC as a transfer agent, and the designation of CCTC as a transfer agent as a good control location.
37.	06/30/2021	Meeting	Enforcement	Coinbase proactively presented to Enforcement Staff a proposal for a Retail Lend product, which it ultimately did not launch after receiving negative Commission feedback.

	Date	Description	Relevant Division(s)/Personnel	Topic(s) Covered
38.	11/08/2021	Meeting	Chair Gensler	Coinbase met with Chair Gensler to discuss its continued interest in registering a securities trading platform.
39.	02/01/2022	Meeting	Commissioner Crenshaw	Coinbase and Commissioner Crenshaw discussed DeFi and transparency in the digital asset marketplace.
40.	02/04/2022	Meeting	Commissioner Lee	Coinbase met with Commissioner Lee to discuss digital assets generally and to introduce its policy team.
41.	03/22/2022	Meeting	Investors Advocate Office	Coinbase discussed its application to sit on the advisory committee, which was denied.
42.	04/07/2022	Meeting	Office of the Chair	Coinbase met with Staff in the Chair's office to discuss how to register given Chair Gensler's view in a recent speech concerning registration.
43.	04/12/2022	Meeting	Trading & Markets	Coinbase and Trading & Markets Staff discussed Coinbase's Grayscale exchange-traded products (ETP) comment letter.
44.	04/27/2022	Meeting	Trading & Markets	Coinbase inquired about broker-dealer registration. Trading & Markets Staff declined to tell Coinbase how it could restart the process.
45.	05/03/2022	Call	Trading & Markets	Coinbase had a follow up call with Trading & Markets Staff about broker-dealer and ETP issues.
46.	07/22/2022	Petition for Rulemaking	Commission	Coinbase filed a formal petition for rulemaking regarding digital asset securities regulation, including 140 specific questions for the Commission.
47.	09/13/2022	Meeting	Corporation Finance Enforcement Trading & Markets	Coinbase met with Staff to discuss considerations on a path to registration.
48.	09/20/2022	Meeting	Corporation Finance Enforcement Trading & Markets	Coinbase met with Staff and primarily discussed the NSE registration model.
49.	10/04/2022	Meeting	Corporation Finance Enforcement Trading & Markets	Coinbase met with Staff to discuss potential approaches to a registration framework. Coinbase also presented on the potential treatment of digital assets under Reg. NMS and Coinbase's current custody and settlement practices.

	Date	Description	Relevant Division(s)/Personnel	Topic(s) Covered
50.	10/11/2022	Meeting	Corporation Finance Enforcement Trading & Markets	Coinbase met with Staff to discuss Coinbase's custody and settlement practices as well as ATS and NSE registration models.
51.	10/18/2022	Meeting	Corporation Finance Enforcement Trading & Markets	Coinbase met with Staff to discuss custody, clearing and settlement topics.
52.	10/25/2022	Meeting	Corporation Finance Enforcement Trading & Markets	Coinbase met with Staff to discuss its trading platform, including order routing, third party platforms, and trading and best execution.
53.	11/04/2022	Meeting	Corporation Finance Enforcement Trading & Markets	Coinbase met with Staff to discuss private key security practices in the digital asset space.
54.	11/08/2022	Meeting	Corporation Finance Enforcement Trading & Markets	Coinbase met with Staff to discuss issuer registration and disclosure requirements.
55.	11/09/2022	Meeting	Commissioner Lizárraga	Coinbase met with Commissioner Lizárraga to discuss the Coinbase rulemaking petition.
56.	11/22/2022	Meeting	Corporation Finance Enforcement Trading & Markets	Coinbase met with Staff to discuss issuer registration and the disclosure regime.
57.	12/01/2022	Meeting	Corporation Finance Enforcement Trading & Markets	Coinbase met with Staff and presented a detailed written proposal outlining a proposed registration framework.
58.	12/06/2022	Comment Letter	Commission	Coinbase filed a follow-on comment letter in connection with its July 22, 2022 petition for rulemaking regarding digital asset securities regulation.
59.	12/07/2022	Meeting	Corporation Finance Enforcement Trading & Markets	Coinbase met with Staff to discuss Staff's questions regarding Coinbase's proposed registration framework, presented to the SEC Staff at the December 1 meeting.
60.	12/20/2022	Meeting	Corporation Finance Enforcement Trading & Markets	Coinbase met with Staff to request information on the SEC's position on the core topics they had been discussing for months. Staff did not provide clarity.

	Date	Description	Relevant Division(s)/Personnel	Topic(s) Covered
61.	01/06/2023	Meeting	Corporation Finance Enforcement Trading & Markets	Coinbase met with SEC Staff to discuss Coinbase's proposal regarding digital asset and digital asset securities listings.
62.	01/23/2023	Meeting Request	Commissioner Uyeda	Coinbase contacted Commissioner Uyeda's confidential assistant to request a meeting.
63.	01/23/2023	Call	Enforcement	Enforcement Staff informed Coinbase they would be proceeding with enforcement and no longer engaging on registration.
64.	01/26/2023	Meeting Request	Office of the Chair	Coinbase requested a meeting with Chair Gensler's crypto counsel, and received no response.
65.	01/30/2023	Meeting Request	Trading & Markets	Coinbase requested a meeting with Trading & Markets Staff to discuss market structure issues around an NSE model.
66.	02/03/2023	Meeting Request	Corporation Finance	Coinbase requested a meeting to discuss issuer registration topics. The Division of Corporation Finance denied Coinbase's request.
67.	02/06/2023	Meeting Request	Commissioner Lizárraga	Coinbase requested a meeting with Commissioner Lizárraga to discuss Coinbase's issuer disclosure comment letter.
68.	02/13/2023	Meeting Request	Office of the Chair	Coinbase followed up regarding its 01/26/2023 request for a meeting with Chair Gensler's crypto counsel; the meeting request was declined; Coinbase was directed to the Division of Enforcement.
69.	02/17/2023	Meeting Request	Commissioner Crenshaw	Coinbase requested a meeting with Commissioner Crenshaw to discuss Coinbase's issuer disclosure comment letter.
70.	02/22/2023	Meeting	Commissioner Peirce	Coinbase met with Commissioner Peirce to discuss Coinbase's issuer disclosure comment letter.
71.	03/03/2023	Meeting	Corporation Finance Enforcement Trading & Markets	Coinbase presented to Staff on Coinbase's staking services.

	Date	Description	Relevant Division(s)/Personnel	Topic(s) Covered
72.	03/10/2023	Meeting	Corporation Finance Enforcement Trading & Markets	Coinbase presented to Staff on Coinbase's staking services.
73.	03/20/2023	Comment Letter	Commission	Coinbase filed a follow-on comment letter regarding staking, in connection with July 22, 2022 formal petition for rulemaking.

EXHIBIT K

Can Gary Gensler Survive Crypto Winter?

D.C.'s top financial cop on Bankman-Fried blowback.

By Ankush Khardori,, a contributing editor who covers legal affairs. He is an attorney and former federal prosecutor.

Feb. 23, 2023

Photo: Shuran Huang/The New York Times

As recently as a year ago, Sam Bankman-Fried seemed to be an unstoppable force in official Washington. The conspicuously disheveled founder and CEO of FTX had positioned himself as a new sort of billionaire and crypto entrepreneur — someone who promised to do good with his extraordinary wealth, who had publicly discussed supporting Democratic political candidates to the tune of a billion dollars in upcoming elections, and who seemed to offer the possibility of legitimizing an industry that had grown exponentially during the pandemic while operating on the fringes of America's financial regulatory apparatus.

By last March, things appeared to be going exceptionally well for Bankman-Fried as he prepared for a private meeting with Gary Gensler, the chair of the Securities and Exchange Commission. We now know that Bankman-Fried was in the midst of executing a dual-pronged political and media strategy that looks to have been one of the most ambitious political-influence operations in recent memory. He was testifying before Congress about how to regulate crypto markets, and behind closed doors, he was successfully lobbying for a bill that would have enacted a system that was very beneficial to him. Meanwhile, Bankman-Fried was schmoozing with (and offering money to) a group of self-styled policy professionals and political pundits whose unofficial seal of approval conferred an aura of intellectual seriousness on his project.

At the time of his meeting with Gensler, Bankman-Fried was in the process of acquiring a stake in the stock exchange IEX, and he was joined by a group of FTX and IEX representatives to pitch a new SEC-approved crypto-trading platform. They included a top FTX lawyer who had worked with Gensler and who, in private, had reportedly bragged about his access to "Gary." This meeting was coming on the heels of a dinner Bankman-Fried arranged with the SEC's incoming general counsel, Dan Berkovitz. (Berkowitz recently stepped down.)

But things did not go as planned for the FTX and IEX crew at that meeting last March. They were evidently seeking agency approval for a so-called "alternative trading system," a more lightly regulated alternative to national securities exchanges. Gensler, in his telling, sharply rebuffed the group.

"I indicated to them they could take their slide deck down on the second slide," Gensler told me during a recent and wide-ranging conversation, "and that I didn't think that they should — with all respect — that it was not a valuable use of their time."

According to Gensler, FTX was far too conflicted to satisfy the agency's regulations. He said that he told the group "that alternative trading systems were something amongst and for institutional investors" and that "just coming into compliance was going to need them to disaggregate their business to address the conflicts — that they should have a separate exchange, separate broker-dealer, separate custody, and that they were in the national security exchange Zip Code, not in the ATS Zip Code." (The outcome of the meeting was first reported by the New York *Times.*)

It was not the first time that Gensler met with Bankman-Fried and other FTX representatives — there was also a previously disclosed session in late 2021 — but when we spoke, it was unclear whether there had been any other meetings between the two men, which might raise further questions among the public about Bankman-Fried's access to U.S. regulators. Gensler's calendars for 2022 have not yet been fully released, so questions on this front have persisted.

So were there any other meetings between the two? "No," Gensler quickly responded when I put the question to him directly.

Gensler's brushback last March may have helped to limit the extraordinary fallout in the sector last year, though of course, plenty of people have been caught without their coats in the harsh and unsparing deep freeze of crypto winter. Retail investors have lost extraordinary sums, there has been a wave of large crypto bankruptcies, and evidence of rampant fraud in the industry, which was already abundant, continues to accumulate.

It is also eminently reasonable to ask whether the SEC could — and should — have done more to crack down on the industry before now. It is, after all, comparatively easy to aggressively go after companies or their principals after their businesses have been exposed by the press or competitors as financially unsound or perhaps even fundamentally fraudulent enterprises, and given the publicly available information, it is fair to question whether the SEC should have pursued concerns about the industry more quickly and assertively than it did in recent years.

The political fallout from the implosion of FTX and the criminal indictment of Bankman-Fried is far from over. It has embarrassed prominent figures throughout Washington. Whether it will have any implications for Gensler, by all accounts an ambitious player in the Biden administration, is still an open question.

It all occurred at a precarious time for him. He was already under fire for an ambitious regulatory agenda that had drawn the ire of Wall Street and generated internal frustration among SEC staff, and some of the same members of Congress who criticized Gensler last year for investigating the industry too aggressively, including New York congressman Ritchie Torres and Minnesota representative Tom Emmer, have since sought to blame Gensler for the FTX disaster.

Meanwhile, there have been reports since last summer suggesting the possibility of a change of leadership at the Treasury Department, where Secretary Janet Yellen has had to deal with widespread public anxiety over inflation. Gensler began his career in government service at Treasury in the late 1990s after nearly two decades at Goldman Sachs, and there have been slight rumblings, which have made their way into the financial press, that Gensler might be interested in leading the department if Yellen decides to leave at some point in the coming years, particularly if Biden is reelected.

All of this raises the stakes for the 65-year-old, as he mounts a public defense of the SEC's record on crypto regulation and enforcement, including during our discussion. We talked about how the industry tried to outmaneuver Congress and the country's financial regulators, as well as how crypto markets should be regulated, but Gensler also made clear that he has been grappling with the same question as many of the rest of us: What, exactly, is the point of crypto?

From the vantage point of today, it is clear that Bankman-Fried was very close to building what has been fairly described as a "regulatory moat" around FTX — locking in a role for himself and his company at the top of the crypto industry. The legislation that he backed, called the Digital Commodities Consumer Protection Act, would have given the Commodity Futures Trading Commission authority to regulate certain crypto products — specifically, bitcoin, ether, and other vaguely identified "digital commodities" — and displaced the SEC's jurisdiction in the area. It was an ambitious but straightforward strategy of domestic regulatory arbitrage that would have effectively allowed the company to pick its own regulator in the U.S. (Though, of course, the March meeting with Gensler shows that Bankman-Fried was looking for regulatory buy-in from all relevant agencies.)

Fairly or not, the CFTC is generally regarded as a more pliant and less assertive financial regulator than the SEC. It was therefore not that surprising when the head of the CFTC disclosed that Bankman-Fried had met with him and other senior officials at the agency ten times over roughly the year leading up to the collapse of the FTX, despite concerns raised in real time by commodities specialists.

"I love the CFTC," said Gensler, who ran the agency during the Obama administration, as we touched on these uncomfortable facts, implicating some of his former and current colleagues. "You're not going to get me to say anything negative about" the CFTC, he added. "It's just too — it's in my blood."

Still, he was unsparing in his assessment of the merits of the legislative effort, which was spearheaded in the Senate by Michigan Democrat Debbie Stabenow. The bill, Gensler told me, would have "unambiguously undermined investor protection" thanks to the vague legislative text that was on the table. "We live in a world where Amazon stock and U.S. treasuries are already digital," Gensler explained. "So many of the bills, literally, you could take the $24 trillion treasury market, put it on a blockchain ledger, and take it outside of the current regime" of federal regulation. (This may sound a bit dry in Gensler's phrasing, but to be clear, it would be a radical and crazy outcome.)

The new Congress is looking again at crypto-specific legislation, but Gensler believes that the SEC has all of the legal tools that it needs. Over the course of our discussion, he articulated a straightforward view of the agency's reach — that pretty much every sort of crypto transaction already falls under the SEC's jurisdiction except spot transactions in bitcoin itself and the actual purchase or sale of goods or services with cryptocurrencies.

"Everything other than bitcoin," Gensler told me, "you can find a website, you can find a group of entrepreneurs, they might set up their legal entities in a tax haven offshore, they might have a foundation, they might lawyer it up to try to arbitrage and make it hard jurisdictionally or so forth." In other words, there are people behind these cryptocurrencies using a variety of complex and legally opaque mechanisms, but at the most basic level, they are trying to promote their tokens and entice investors. (Bitcoin, because of its unique history and creation story, is fundamentally different from other crypto projects in this respect.)

"They might drop their tokens overseas at first and contend or pretend that it's going to take six months before they come back to the U.S.," he continued. "But at the core," he argued, "these tokens are securities because there's a group in the middle and the public is anticipating profits based on that group." The claim that crypto investors are hoping to profit based on the efforts of those intermediaries — in much the same way that stockholders in public companies hope to see their investments appreciate over time — is central to Gensler's position that, as a legal matter, these are actually transactions in securities that fall within the SEC's jurisdiction.

As a matter of securities law, Gensler's view is not that hard to understand, though it is still being tested in the courts. The agency racked up a significant win last November, but there are other pending legal rulings that are eagerly awaited by industry observers, and there is a well-resourced crypto lobby that is not likely to back down anytime soon.

For now, the SEC has emerged as the industry's primary civil regulator, whether crypto advocates like it or not — but there are still plenty of big questions about what the agency has been up to in recent years and what its current enforcement strategy will actually achieve. Arguably the federal government's actions — including those of the SEC — didn't do much to prevent the loss of trillions of

dollars in value over the last year, potentially impacting tens of millions of Americans who hold crypto assets in some form.

Gensler was extremely diplomatic about it when we spoke, but a large part of this mess is attributable to the Trump administration's extremely lax approach to financial fraud and regulation, as well as the credulousness of the industry's supporters in Congress. "In terms of policy-makers around the globe," Gensler explained, "you had this ascendancy in the crypto market during the COVID period and low interest rates," during which time the market grew "from $250 billion to $3 trillion."

Capitol Hill was also an important player in the mess. Many members of Congress — "good faith, hardworking members of Congress," Gensler was quick to add — felt compelled to meet with industry advocates and hear them out about the supposed financial revolution that they were ushering in. According to Gensler, members of Congress "were hearing about crypto increasingly because the retail public was also caught up" thanks to things like Super Bowl advertising and support from celebrities like Kim Kardashian. In the downturn that followed, Gensler's agency has brought charges against various high-profile crypto opportunists, including Kardashian, who settled an enforcement action last October.

Gensler has said that the "roadway" or "runway" for crypto firms that are not registered with the SEC is "getting shorter," but the metaphor is an odd one. The planes are already in the air, so the agency is really trying to ground them.

That explains a series of significant moves by the agency since the start of the year — including a major enforcement action against two prominent crypto firms based on an unregistered crypto asset lending program; a recent settlement with a crypto exchange based on an industry practice known as "staking"; and notice of a potential enforcement action against a stablecoin issuer whose product is affiliated with Binance.

Gensler broadly referred to these kinds of firms, which seem to differ endlessly in their offerings and corporate structures, as "storefronts" that are providing services to the public "in a way that's commingled and is rife with conflicts." He argued that many of them combine functions that would have to be legally disaggregated in traditionally regulated markets, including roles that would ordinarily be separated among some combination of exchanges, lenders, market-makers, broker-dealers, investment advisers, and custodians.

"The conflicts in these storefronts," Gensler told me, "we do not allow in traditional finance, we don't allow in the securities markets, we don't allow it in the commercial banking markets, and we don't allow it in crypto because these storefronts are fundamentally and generally noncompliant with the securities laws as we know them." He argued that network effects have made "a small handful of storefronts" particularly important, but "whether they call themselves lending or staking as a service or exchanges, they're bringing together millions of customers."

On its face, the idea that an increase in SEC registrations and filings from crypto companies will somehow markedly improve the integrity and resilience of this market seems dubious. Last February, the crypto lender BlockFi agreed to register with the SEC at the agency's urging, paid a $100 million fine, and then went bankrupt in November. The stark turn of events seemed to reflect, at least in part, the fact that the underlying crypto asset class is both novel and unstable, and that this is not an industry with consistent and widely accepted valuation, marking, or disclosure conventions.

Perhaps more importantly, the implosion of BlockFi seemed to reflect the legal and practical limits of the SEC's strategy to force more crypto firms to register with the agency. That is because companies that register with the SEC may have to satisfy more detailed and burdensome disclosure requirements, but that does not mean that those companies or their business models will magically become more stable or financially sound.

The unstated premise of the SEC's current enforcement push appears to be that if the government can broadly stigmatize the industry and market participants, then ordinary people — the retail investors all over the world who have gotten swept up in the crypto frenzy of recent years — might think long and hard about whether to hold these assets in any form. It is a message that federal regulators recently delivered directly to the banking industry, warning them not to issue or hold any crypto assets because doing so would be "highly likely to be inconsistent with safe and sound banking practices."

I asked Gensler whether federal regulators with consumer-facing responsibilities should send a comparable message to retail investors, but he gently resisted. "I'm in a job where I'm supposed to be merit neutral in terms of what risk investors want to take," he told me at one point, "but not neutral towards the investor protection — the full, fair, and truthful disclosure you get when you're investing in a security."

Perhaps the most telling answer I got from Gensler over the course of our discussion was when I asked him to explain the legitimate use case for crypto: What is the actual point of this new sector, and could it actually provide a valuable economic or financial service for ordinary people and the global economy?

Gensler was careful to draw a sharp distinction between two types of supposed innovations promoted by crypto's earliest advocates. The first is the idea of a distributed accounting ledger — the blockchain technology that came into the world with Bitcoin's invention — that is in theory more transparent, accessible, and resilient against theft and cyberattacks than centralized ledgers. Gensler clearly admired the technical creation. "I personally think it's very rare that you need that, but it's possible," he said. "That's a real innovation."

The second, of course, is the notion that cryptocurrencies might actually provide a useful store of value or alternative payment mechanism, and on that point, Gensler appeared to be much less impressed.

"History tells us throughout — through antiquity to now — that economies coalesce around one monetary unit," he said. "There is a network effect to having one unit that we humans accept as a medium of exchange and unit of account — a store of value — one unit. The two things governments do since Genghis Khan," he observed, "is basically say, 'This is what's accepted for your taxes, and it's accepted for all debts, public and private.'"

"I don't think there's much economic use for a micro-currency, and we haven't seen one in centuries," Gensler said. "Most of these tokens will fail, because the question is about these economics. What's the 'there' there?"

It was a diplomatic answer for someone who is tasked with reigning in a well-funded and well-lawyered industry that many people believe is generally useless and economically wasteful. Here is a simpler way of thinking about it if you are an ordinary investor who bought “shitcoins” in recent years, perhaps because of the celebrity endorsements, the high-profile ads, or plain-old fear of missing out: Get out while you can.

EXHIBIT L

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, **Plaintiff,** **-against-** **COINBASE, INC. AND COINBASE GLOBAL, INC.** **Defendants.**	**23 Civ. 04738 (KPF)**

PLAINTIFF'S FIRST REQUEST FOR PRODUCTION

Plaintiff Securities and Exchange Commission, pursuant to Fed. R. Civ. P. 34, hereby serves its First Request for Production to Defendants Coinbase, Inc. and Coinbase Global, Inc., and requests the production of responsive Documents within thirty days of service hereof. The SEC further requests such production conform to the Definitions and Instructions set forth below.

DEFINITIONS AND INSTRUCTIONS

A. The terms "You, "Your" or "Coinbase" shall mean Defendants Coinbase, Inc. and Coinbase Global, Inc. under the full definition of "defendant" set forth in Local Civil Rule 26.3(c)(5).

B. The term "SEC" shall mean Plaintiff Securities and Exchange Commission under the full definition of "plaintiff" set forth in Local Civil Rule 26.3(c)(5).

C. The term "Complaint" shall mean the Complaint filed by the SEC in the above-styled matter on June 6, 2023 (Dkt. # 1).

D. The term "Answer" shall mean the Answer and Defenses filed by Coinbase in the above-styled matter on June 28, 2023 (Dkt. # 22).

E. The term "Initial Disclosures" shall mean Your initial disclosures under Fed. R. Civ. P. 26(a)(1) in the above-styled matter.

F. The term "Coinbase Platform" shall mean Coinbase's digital asset spot exchange as first referenced in Paragraph 31 of the Preliminary Statement section of the Answer.

G. The term "Prime" shall mean Coinbase Prime as first referenced in Paragraph 32 of the Preliminary Statement section of the Answer.

H. The term "Listing Application" shall mean Coinbase's digital asset listing application, as first referenced in Paragraph 104 of the Responses to Plaintiff's Allegations section of the Answer.

I. The term "Crypto Asset" shall mean an asset issued or transferred using distributed ledger or blockchain technology, including assets referred to colloquially as "digital assets," "crypto assets," "cryptocurrencies," digital "coins," or "tokens."

J. The terms "Trade" or "Trading" shall mean trade, swap, purchase, exchange, or sale.

K. The term "Named Tokens" shall mean the following Crypto Assets named in the Complaint: Solana (SOL), Cardano (ADA), Polygon (MATIC), Filecoin (FIL), Sandbox (SAND), Axie Infinity (AXS), Chiliz (CHZ), Flow (FLOW), Internet Computer Protocol (ICP), Near (NEAR), Voyager (VGX), and Dash (DASH).

L. The term "Asset Hub" shall mean the Coinbase Asset Hub as first referenced in Paragraph 65 of the Responses to Plaintiff's Allegations section of the Answer.

M. The term "Primary Token" shall mean any Crypto Asset approved for listing or Trading on the Coinbase Platform or by or through Prime, whether through Asset Hub or otherwise, which was offered or sold by the issuer to purchasers on the Coinbase Platform or by or through Prime.

N. The term "Staking Program" shall mean Coinbase's staking program as referenced in Paragraph 7 of the Responses to Plaintiff's Allegations section of the Answer.

O. The term "User Agreement" shall mean Coinbase's User Agreement as first referenced in Paragraph 83 of the Responses to Plaintiff's Allegations section of the Answer.

P. The term "Trading Rules" shall mean the Coinbase Markets Trading Rules as first referenced in Paragraph 88 of the Responses to Plaintiff's Allegations section of the Answer.

Q. The term "Listing Services Agreement" shall mean the Coinbase Listing Services Agreement included as part of the listing process for Crypto Assets in Asset Hub.

R. The term "Prime Broker Agreement" shall mean the Coinbase Prime Broker Agreement included as part of Prime.

S. The term "Prime Product Guide" shall mean the Coinbase Prime Product Guide as first referenced in Paragraph 101 of the Responses to Plaintiff's Allegations section of the Answer.

T. The terms "Market Making" or "Market Makers" shall mean independent companies that provide liquidity to facilitate Trading on the Coinbase Platform, as those terms are referred to on Coinbase's website (www.coinbase.com).

U. The term "Policies" shall mean policies, procedures, manuals, or rules.

V. The term "Communication" is defined to be synonymous in meaning and equal in scope to the usage of the term "communication" in Local Civil Rule 26.3(c)(1).

W. The term "Person" is defined to be synonymous in meaning and equal in scope to the usage of the term "person" in Local Civil Rule 26.3(c)(6).

X. The term "Document" is defined to be synonymous in meaning and equal in scope to the usage of the term "document" in Local Civil Rule 26.3(c)(2).

Y. The term "Concerning" is defined to be synonymous in meaning and equal in scope to the usage of the term "concerning" in Local Civil Rule 26.3(c)(7).

Z. The term "Date" shall mean the exact date, month and year, if ascertainable or, if not, the best approximation of the date (based upon relationship with other events).

AA. The term "Identify" with respect to persons is defined to be synonymous in meaning and equal in scope to the usage of the term "identify" with respect to persons in Local Civil Rule 26.3(c)(3).

BB. The term "Identify" with respect to documents is defined to be synonymous in meaning and equal in scope to the usage of the term "identify" with respect to documents in Local Civil Rule 26.3(c)(4).

CC. These requests incorporate the rules of construction set forth in Local Civil Rule 26.3(d).

DD. These requests call for Documents in Your actual or constructive possession, custody, or control, regardless of where such Documents are located.

EE. All Documents must be produced in their entirety, including all attachments and enclosures, regardless of whether any portions thereof may contain information not requested. For example, all responsive emails shall be produced with their attachments, if any. Whenever a Document or group of Documents is removed from a file folder, binder, file drawer, file box, notebook, or the cover or container, a copy of the label of such cover or other container must be attached to the Document or group of Documents. All Documents are to be produced as they are kept in the usual course of business so the SEC can ascertain the files in which the Documents were located, their relative order in such files, and how such files were maintained.

FF. All Documents responsive to these requests that are maintained in the usual course of business in electronic format or ESI shall be produced in their ***native*** format along with software necessary to interpret such files if such software is not readily available. Production of ESI shall comply with the SEC's Data Delivery Standards, which the SEC is providing contemporaneously herewith.

GG. Depending on the volume of Documents responsive to these requests, You may produce the Documents to the SEC via secure file transfers in multiple increments of 30 GB or less

using the SEC's Accellion/Kiteworks system. Please contact the SEC's undersigned counsel for an email link to the system if You or Your counsel do not already have an active user account. Please be sure to include the undersigned counsel as well as ENF-CPU@SEC.GOV on the Accellion/Kiteworks email transmission, and ensure You do ***not*** copy any non-SEC email addresses, as the system does not permit those on a transmission. Also, please list "HO-14315 Litigation: SEC v. Coinbase, Inc. et al (Case No. 23 Civ 4738 (KPF))" and Identify yourself as the producing party on the subject line or in the body of the transmission. Note that it is best when using the Accellion/Kiteworks system to put Your files into a container (such as a WinZip or WinRAR file) before adding them to the email transmission. Chrome and Edge are the preferred web browsers for use with Accellion/Kiteworks.

HH. Otherwise, for larger productions, please send the Documents on a hard drive or other tangible deliverable to the following address along with a cover letter referencing Your name as the producing party and "HO-14315 Litigation: SEC v. Coinbase, Inc. et al (Case No. 23 Civ 4738 (KPF))" and notify the SEC's undersigned counsel when the production is made: ENF-CPU (U.S. Securities & Exchange Commission), 14420 Albemarle Point Place, Suite 102, Chantilly, VA 20151-1750.

II. Affix a Bates label or other identifying mark to each page of each Document or ESI produced.

JJ. You must make a thorough search for all Documents requested herein. If no Documents responsive to a particular request exist, You must so state in Your response. If a Document or category of Documents once existed, but have since been lost, destroyed, or are no longer in Your actual or constructive possession, custody, or control, You must Identify each such Document or category of Documents in Your response and state the details Concerning the loss or destruction or the reason the Document or category of Documents no longer are in Your actual or constructive possession, custody, or control.

KK. These requests do not contemplate the production of Documents that You already produced to the SEC during its investigation of this matter. However, in the event that one or more Documents responsive to a particular request already were produced, You must state so in Your response and Identify the particular Document or Documents by Bates number so that the SEC can locate the materials in its file. If the Document or Documents do not contain Bates numbers, You must instead state the Date You produced the material to the SEC during the investigation and specify the particular subpoena and request number in response to which the material was produced.

LL. These requests do not contemplate the disclosure of privileged information and are intended to call only for the production of non-privileged Documents. Nevertheless, if You object in whole or in part to producing a Document because of a privilege, You must comply with Local Civil Rule 26.2 in responding to the relevant request.

MM. These requests are served without prejudice to the SEC's right to serve additional requests during the course of discovery.

NN. You are under a continuing obligation to supplement Your responses to these requests and any corresponding production of Documents under the circumstances specified in Fed. R. Civ. P. 26(e).

OO. Unless otherwise specified below, the time period for these requests is January 1, 2019 through the present.

REQUESTS FOR PRODUCTION

Please refer to the Definitions and Instructions above for a description of defined capitalized terms before responding to these requests.

Request No. 1. Please produce all Documents identified in Your Initial Disclosures.

Request No. 2. Please produce all Documents sufficient to show the technical specifications (such as architecture diagrams, visual depictions, and technical design requirements) underlying the infrastructure and software Coinbase uses for the Coinbase Platform.

Request No. 3. Please produce all Documents sufficient to show the technical specifications (such as architecture diagrams, visual depictions, and technical design requirements) underlying the infrastructure and software Coinbase uses for Prime.

Request No. 4. Please produce Coinbase's Policies Concerning Trading operations on the Coinbase Platform.

Request No. 5. Please produce Coinbase's Policies Concerning the order books and matching engine for the Coinbase Platform.

Request No. 6. To the extent not encompassed by Request Nos. 4 and 5, please produce all Documents sufficient to show how the Coinbase Platform brings together or matches, and then executes, Trading orders of Crypto Assets (whether retail customer orders, margin Trading orders, or orders of Coinbase's institutional partners, clients, or customers Trading for their own customers), including, but not limited to, Documents sufficient to show the methods Coinbase uses to match and execute the orders, and Coinbase's Policies for matching and executing the orders.

Request No. 7. Please produce all executed agreements Concerning the Coinbase Platform between Coinbase and any Market Makers or Crypto Asset issuers.

Request No. 8. Please produce all executed agreements Concerning Prime between Coinbase and any Crypto Asset issuers or any third-party platforms to which Coinbase routes customer orders.

Request No. 9. Please produce all Documents provided to new customers upon the creation of a Coinbase account for Trading on the Coinbase Platform or by or through Prime, including, but not limited to, any term of use agreement, rules, Policies, codes of conduct, product options, or informational materials.

Request No. 10. Please produce Coinbase's Policies Concerning the functionality of Coinbase's "best price" matching rule, as first referenced in Paragraph 98 of the Complaint.

Request No. 11. Please produce Coinbase's Policies Concerning Market Making on the Coinbase Platform.

Request No. 12. Please produce Coinbase's Policies Concerning any Trading restrictions applicable to issuers offering or selling Crypto Assets directly on the Coinbase Platform.

Request No. 13. Please produce all systems Documents and business requirements documentation (BRD) for the technology used to facilitate Trading between customers on the Coinbase Platform, management of customer funds and Crypto Assets, and order routing and execution.

Request No. 14. Please produce Coinbase's Policies for custodying or safeguarding customer funds and Crypto Assets, including, but not limited to, Coinbase-controlled omnibus accounts/wallets with

private keys.

Request No. 15. Please produce Coinbase's Policies for clearing or settling customer Trades made on the Coinbase Platform.

Request No. 16. Please produce Coinbase's Policies for ensuring customer funds and Crypto Assets, including, but not limited to, such funds and Crypto Assets held in Coinbase-controlled omnibus accounts/wallets with private keys, are not commingled with Coinbase's own funds and Crypto Assets or otherwise used to support any proprietary Trading or other activities by Coinbase.

Request No. 17. Please produce Coinbase's Policies for effecting the transfer of customer funds and Crypto Assets, either through an internal ledger system or by any other means, between customer accounts.

Request No. 18. Please produce Coinbase's Policies for customer order taking, order routing, and order execution on the Coinbase Platform.

Request No. 19. Please produce Coinbase's Policies for customer order taking, order routing, and order execution by or through Prime.

Request No. 20. Please produce Coinbase's Policies for routing customer orders by or through Prime to the Coinbase Platform or to any third-party platform.

Request No. 21. Please produce Coinbase's marketing, offering, advertising, promotional, or sales

Documents in which customers are encouraged to open accounts with Coinbase and use the services of the Coinbase Platform or of Prime.

Request No. 22. Please produce Coinbase's fee schedules for customer Trading activity on the Coinbase Platform and Documents sufficient to show any transaction-based fees, fees from Trading on margin, or fees collected from institutional partners, clients, or customers who use the Coinbase Platform to Trade for their own customers.

Request No. 23. Please produce Coinbase's fee schedules for customer Trading activity by or through Prime and Documents sufficient to show any transaction-based fees, fees from Trading on margin, or fees collected from institutional partners, clients, or customers who use Prime to Trade for their own customers.

Request No. 24. Please produce all Documents sufficient to show the order routing methodology used by Coinbase for routing customer orders on the Coinbase Platform.

Request No. 25. Please produce all Documents sufficient to show the order routing methodology used by Coinbase or by Prime for routing customer orders by or through Prime to the Coinbase Platform or to any third-party platform.

Request No. 26. Please produce Coinbase's Policies for custodying and handling customer Crypto Assets and fiat on the Coinbase Platform.

Request No. 27. Please produce Coinbase's Policies for custodying and handling customer Crypto

Assets and fiat on or as part of Prime.

Request No. 28. Please produce Coinbase's Policies for recommending or evaluating the merits of particular Crypto Assets available on the Coinbase Platform for customer Trading.

Request No. 29. Please produce Coinbase's Policies for recommending or evaluating the merits of particular Crypto Assets available by or through Prime for customer Trading.

Request No. 30. Please produce all Documents sufficient to show any negotiations Coinbase performs with Crypto Asset issuers on behalf of Coinbase's institutional partners, clients, or customers for Trading in the Crypto Assets by or through Prime.

Request No. 31. Please produce all research, insights, market intelligence, or other Trading resource Documents provided to customers Trading on the Coinbase Platform or by or through Prime.

Request No. 32. Please produce all Documents sufficient to show whether and to what extent Coinbase maintains a level of net capital equal to or in excess of the aggregate amount of customer funds and Crypto Assets custodied at Coinbase.

Request No. 33. Please produce the completed Listing Application, supporting Documents, and any amendments to the application or supporting Documents submitted by or on behalf of each of the issuers of the Named Tokens.

Request No. 34. Please produce all Communications between You and each of the issuers of the

Named Tokens Concerning the Listing Application, supporting Documents, or any amendments thereto.

Request No. 35. Please produce all Communications between You and each of the issuers of the Named Tokens Concerning any additional information or Documents that You requested from the issuers as part of Your review of the Listing Application, supporting Documents, or any amendments thereto.

Request No. 36. Please produce any additional Documents that You received in response to Your request to the issuers of the Named Tokens as referenced in Request No. 35.

Request No. 37. Please produce all Documents sufficient to show, with respect to each of the Named Tokens, the source(s) of the "information" on the "digital asset's page on Coinbase's website," as first referenced in Paragraph 121 of the of the Responses to Plaintiff's Allegations section of the Answer.

Request No. 38. Please produce the completed Listing Application or Listing Agreement, supporting Documents, and any amendments to the application or agreement or to the supporting Documents submitted by or on behalf of the issuer of any Primary Token.

Request No. 39. Please produce all Communications between You and the issuer of any Primary Token Concerning the Listing Application, Listing Agreement, supporting Documents, or any amendments thereto.

Request No. 40. Please produce all Communications between You and the issuer of any Primary Token Concerning any additional information or Documents that You requested from the issuer as part of Your review of the Listing Application, Listing Agreement, supporting Documents, or any amendments thereto.

Request No. 41. Please produce any additional Documents that You received in response to Your request to the issuer of any Primary Token as referenced in Request No. 40.

Request No. 42. Please produce all Documents sufficient to show the factual basis for Your denial of the allegations in Paragraph 133 of the Complaint.

Request No. 43. Please produce all Documents sufficient to show the factual basis for Your denial of the allegations in Paragraph 145 of the Complaint.

Request No. 44. Please produce all Documents sufficient to show the factual basis for Your denial of the allegations in Paragraph 152 of the Complaint.

Request No. 45. Please produce all Documents sufficient to show the factual basis for Your denial of the allegations in Paragraph 173 of the Complaint.

Request No. 46. Please produce all Documents sufficient to show the factual basis for Your denial of the allegations in Paragraph 195 of the Complaint.

Request No. 47. Please produce all Documents sufficient to show the factual basis for Your denial

of the allegations in Paragraph 208 of the Complaint.

Request No. 48. Please produce all Documents sufficient to show the factual basis for Your denial of the allegations in Paragraph 217 of the Complaint.

Request No. 49. Please produce all Documents sufficient to show the factual basis for Your denial of the allegations in Paragraph 237 of the Complaint.

Request No. 50. Please produce all Documents sufficient to show the factual basis for Your denial of the allegations in Paragraph 251 of the Complaint.

Request No. 51. Please produce all Documents sufficient to show the factual basis for Your denial of the allegations in Paragraph 262 of the Complaint.

Request No. 52. Please produce all Documents sufficient to show the factual basis for Your denial of the allegations in Paragraph 276 of the Complaint.

Request No. 53. Please produce all Documents sufficient to show the factual basis for Your denial of the allegations in Paragraph 287 of the Complaint.

Request No. 54. Please produce all Documents sufficient to show the factual basis for Your denial of the allegations in Paragraph 137 of the Complaint.

Request No. 55. Please produce all Documents sufficient to show the factual basis for Your denial

in Paragraph 140 of the Responses to Plaintiff's Allegations section of the Answer to the fourth sentence of the corresponding allegations in Paragraph 140 of the Complaint—that is, "This marketed burning of SOL as part of the Solana network's 'deflationary mechanism' has led investors reasonably to view their purchase of SOL as having the potential for profit to the extent there is a built-in mechanism to decrease the supply and therefore increase the price of SOL."

Request No. 56. Please produce all Documents sufficient to show the factual basis for Your denial in Paragraph 184 of the Responses to Plaintiff's Allegations section of the Answer to the first sentence of the corresponding allegations in Paragraph 184 of the Complaint—that is, "The economic structure of FIL distribution and public statements about that structure further invited investors to view FIL as an investment in Protocol Labs' and the Filecoin Foundation's efforts and to conclude that FIL investors' interests were aligned with those of FIL's developers."

Request No. 57. Please produce all Documents sufficient to show the factual basis for Your denial in Paragraph 229 of the Responses to Plaintiff's Allegations section of the Answer to the third sentence of the corresponding allegations in Paragraph 229 of the Complaint—that is, "As with other Crypto Asset securities set forth herein, this marketed burning of CHZ has led investors reasonably to view their purchase of CHZ as having the potential for profit."

Request No. 58. Please produce all Documents sufficient to show the factual basis for Your denial in Paragraph 236 of the Responses to Plaintiff's Allegations section of the Answer to the first sentence of the corresponding allegations in Paragraph 236 of the Complaint—that is, "Given that FLOW are required to interact with the Flow blockchain, the demand for and the value of the FLOW token would increase as a result of Dapper Labs' and the Flow development team's efforts to develop the

Flow blockchain network and increase demand for its features and, thus, for the FLOW token itself."

Request No. 59. Please produce all Documents sufficient to show the factual basis for Your denial in Paragraph 236 of the Responses to Plaintiff's Allegations section of the Answer to the second sentence of the corresponding allegations in Paragraph 236 of the Complaint—that is, "The increase in value of FLOW would inure to all FLOW holders—investors and the Dapper Labs/Flow development team alike."

Request No. 60. Please produce all Documents sufficient to show the factual basis for Your denial of the allegations in Paragraph 240 of the Complaint.

Request No. 61. Please produce all Documents sufficient to show the factual basis for Your denial in Paragraph 257 of the Responses to Plaintiff's Allegations section of the Answer to the fourth sentence of the corresponding allegations in Paragraph 257 of the Complaint—that is, "As with other Crypto Asset securities set forth herein, this marketed burning of ICP as part of the system's 'deflationary' mechanism has led investors reasonably to view their purchase of ICP as having the potential for profit."

Request No. 62. Please produce all Documents sufficient to show the factual basis for Your denial in Paragraph 269 of the Responses to Plaintiff's Allegations section of the Answer to the third sentence of the corresponding allegations in Paragraph 269 of the Complaint—that is, "As with other Crypto Asset securities set forth herein, this marketing burning of NEAR has led investors reasonably to view their purchase of NEAR as having the potential for profit."

Request No. 63. Please produce all Documents sufficient to show the factual basis for Your denial in Paragraph 281 of the Responses to Plaintiff's Allegations section of the Answer to the second sentence of the corresponding allegations in Paragraph 281 of the Complaint—that is, "As with the 'burn' mechanisms of other Crypto Asset securities set forth herein, this marketed burning of VGX led investors reasonably to view their purchase of VGX as having the potential for profit."

Request No. 64. Please produce all Documents sufficient to show the factual basis for Your denial in Paragraph 286 of the Responses to Plaintiff's Allegations section of the Answer to the fifth sentence of the corresponding allegations in Paragraph 286 of the Complaint—that is, "Accordingly, the fortunes of the investors (*i.e.*, the non-Masternodes token holders) are tied to the fortunes of the Masternodes and the DCG."

Request No. 65. Please produce all Documents sufficient to show any representations made to You or to the public by the issuers of the Named Tokens Concerning any use (other than for investment or profit making) for the Named Tokens.

Request No. 66. Please produce all Documents sufficient to show how Coinbase operates the Staking Program, including, but not limited to, Documents sufficient to show how Coinbase stores user balances, how often staked assets are sent to platforms or protocols to be staked, how and when Coinbase receives or comes into possession of staking rewards, how Coinbase transfers any portion of those rewards to itself (as a "commission" or otherwise), and how and when Coinbase allocates and pays those rewards including any governance rewards.

Request No. 67. Please produce all Documents sufficient to Identify and show all Coinbase

"affiliates" who "facilitate the staking" of Coinbase customers' assets as part of the Staking Program (as set forth in the User Agreement).

Request No. 68. Please produce all Documents sufficient to show Coinbase's marketing, offering, advertising, or promotion of the Staking Program, including, but not limited to, social media posts and articles, blog entries, or other statements or posts on Coinbase's website (www.coinbase.com).

Request No. 69. Please produce all executed agreements between Coinbase and third parties Concerning the Staking Program, including, but not limited to, agreements with Coinbase customers, vendors, consultants, Crypto Asset issuers, or other blockchain businesses.

Request No. 70. Please produce all Documents sufficient to show the technical specifications (such as architecture diagrams, visual depictions, and technical design requirements) underlying the infrastructure and software Coinbase uses for its staking services in the Staking Program.

Request No. 71. Please produce all Documents sufficient to show how Coinbase maintains the amount of staked assets owned by each user in the Staking Program along with the supporting detail of how rewards are earned, collected, and divided among staking customers.

Request No. 72. Please produce all Documents sufficient to show the factual basis for Your denial of the allegations in Paragraph 317 of the Complaint.

Request No. 73. Please produce all Documents sufficient to show the factual basis for Your denial of the allegations in Paragraph 326 of the Complaint.

Request No. 74. Please produce all Documents sufficient to show the factual basis for Your denial of the allegations in Paragraphs 340, 341, and 342 of the Complaint.

Request No. 75. Please produce all Documents sufficient to show the "commercially reasonable efforts" Coinbase "use[s]" "to prevent any staked assets from slashing" (as set forth in the User Agreement).

Request No. 76. Please produce all Communications with any Coinbase Staking Program user, customer, or participant Concerning any request by any such user, customer, or participant to have their Crypto Assets "replaced" (as that term is used in the User Agreement) in response to any slashing event claimed by such user, customer, or participant.

Request No. 77. Please produce all Documents sufficient to show the factual basis for Your denial of the allegations in Paragraph 347 of the Complaint.

Request No. 78. Please produce all Documents sufficient to show the extent to which (and when during the time period) Coinbase has staked or "may at times stake its own digital assets through Coinbase's staking services" alongside those of Staking Program customers, as set forth in Paragraph 348 of the Responses to Plaintiff's Allegations section of the Answer.

Request No. 79. Please produce all Documents sufficient to show whether Staking Program customers' assets are held or maintained together in wallets controlled by Coinbase (segregated by asset), or whether each Staking Program customer's assets are segregated from other customers' assets

in individual wallets.

Request No. 80. Please produce all Documents relating to the statement in Paragraph 351 of the Responses to Plaintiff's Allegations section of the Answer that "Coinbase further admits that the probability of a validator being chosen to participate in a consensus activity may, on some protocols, increase in proportion to the number of digital assets staked to it", including, but not limited to, Documents sufficient to show for which specific protocols (of the "some protocols") that is true, and when and under what circumstances that actually occurs or has occurred.

Request No. 81. Please produce all Documents sufficient to show the factual basis for Your denial of the allegations in Paragraph 357 of the Complaint.

Request No. 82. Please produce all Documents sufficient to show the factual basis for Your denial of the allegations in Paragraph 361 of the Complaint.

Request No. 83. Please produce all Communications Concerning the Staking Program between You and anyone employed by or associated with the Cardano, Solana, Cosmos, Tezos, or Ethereum blockchain protocols, including, but not limited to, Communications sufficient to show how and when the Staking Program infrastructure and the technical connections between the Staking Program and each of the five protocols were built or established.

Request No. 84. Please produce all Documents sufficient to show the factual basis for Your denial of the allegations in Paragraph 363 of the Complaint.

Request No. 85. Please produce all Documents sufficient to show the factual basis for Your denial of the allegations in Paragraph 365 of the Complaint.

Request No. 86. Please produce all Documents sufficient to show the factual basis for Your denial of the allegations in Paragraph 367 of the Complaint.

Request No. 87. Please produce all versions of the Listing Application in effect from January 1, 2018 through the present.

Request No. 88. Please produce all versions of the User Agreement in effect during the time period.

Request No. 89. Please produce all versions of the Trading Rules in effect during the time period.

Request No. 90. Please produce all versions of the Listing Services Agreement in effect during the time period.

Request No. 91. Please produce all versions of the Prime Broker Agreement in effect during the time period.

Request No. 92. Please produce all versions of the Prime Product Guide in effect during the time period.

Request No. 93. Please produce all versions of account opening agreements or account opening Documents in effect during the time period for Coinbase customers Trading on the Coinbase

Platform or by or through Prime.

Request No. 94. Please produce all versions of account opening agreements or account opening Documents in effect during the time period for Coinbase institutional partners, clients, or customers Trading for their own customers on the Coinbase Platform or by or through Prime.

Request No. 95. Please produce all Documents sufficient to show the factual basis for any exemptions Coinbase claims from registering as (i) a national securities exchange under Section 6 of the Securities Exchange Act of 1934 [15 U.S.C. § 78f], (ii) a broker under Section 15(a) of the Securities Exchange Act of 1934 [15 U.S.C. § 78o *et seq.*], or (iii) a clearing agency under Section 17A(b) of the Securities Exchange Act of 1934 [15 U.S.C. § 78q-1(b)].

Request No. 96. Please produce all Documents sufficient to show the total gross revenue You generated from transaction fees through customer Trading and customer Trading on margin on the Coinbase Platform.

Request No. 97. Please produce all Documents sufficient to show the total gross revenue You generated from transaction fees through customer Trading and customer Trading on margin by or through Prime.

Request No. 98. Please produce all Documents sufficient to show the total gross revenue You generated from fees from institutional partners, clients, or customers who Traded for their own customers on the Coinbase Platform.

Request No. 99. Please produce all Documents sufficient to show the total gross revenue You generated from fees from institutional partners, clients, or customers who Traded for their own customers by or through Prime.

Request No. 100. Please produce all Documents sufficient to show the total gross revenue You generated through the Staking Program.

Request No. 101. Please produce all Documents sufficient to show the total gross revenue You generated from fees charged to issuers for listing their Crypto Assets for Trading on the Coinbase Platform or by or through Prime.

Request No. 102. Please produce all Documents sufficient to show the business expenses that You incurred in operating the Coinbase Platform, including, but not limited to, all Documents substantiating the incurrence and payment of each such business expense.

Request No. 103. Please produce all Documents sufficient to show the business expenses that You incurred in operating Prime, including, but not limited to, all Documents substantiating the incurrence and payment of each such business expense.

Request No. 104. Please produce all Documents sufficient to show the business expenses that You incurred in operating the Staking Program, including, but not limited to, all Documents substantiating the incurrence and payment of each such business expense.

Request No. 105. Please produce all Documents sufficient to show the net gain/loss for customer

Trading and customer Trading on margin on the Coinbase Platform. For purposes of Your response, You may produce data in the aggregate for U.S.-based retail customers during the time period.

Request No. 106. Please produce all Documents sufficient to show the net gain/loss for customer Trading and customer Trading on margin by or through Prime. For purposes of Your response, You may produce data in the aggregate for Coinbase's U.S.-based institutional partners, clients, or customers Trading for their own customers during the time period.

Request No. 107. Please produce all Documents sufficient to show the net gain/loss for users, customers, or participants in the Staking Program. For purposes of Your response, You may produce data in the aggregate for U.S.-based retail users, customers, or participants during the time period.

Request No. 108. Please produce all Documents sufficient to show the factual basis for Your denial in Paragraph 71 of the Responses to Plaintiff's Allegations section of the Answer to the first sentence of the corresponding allegations in Paragraph 71 of the Complaint—that is, "Coinbase and CGI share the same board of directors and the majority of CGI's executive officers hold the same executive positions at Coinbase, including Brian Armstrong, who acts as CEO for both Coinbase and CGI."

Request No. 109. Please produce all Documents sufficient to show the factual basis for Your denial in Paragraph 72 of the Responses to Plaintiff's Allegations section of the Answer to the first sentence of the corresponding allegations in Paragraph 72 of the Complaint—that is, "Indeed, in their public statements, Coinbase and CGI do not distinguish between themselves."

Request No. 110. Please produce all versions of Defendant Coinbase Global, Inc.'s Code of Business

Conduct & Ethics in effect during the time period.

Request No. 111. Please produce all Documents sufficient to show the organizational structure and employees of Defendant Coinbase Global, Inc.

Request No. 112. Please produce all Documents sufficient to show the members of the board of directors and executive officers of Defendant Coinbase Global, Inc. during the time period.

Request No. 113. Please produce all Documents sufficient to show the members of the board of directors and executive officers of Defendant Coinbase, Inc. during the time period.

Request No. 114. Please produce all Documents sufficient to show the flow of all funds between Defendants Coinbase, Inc. and Coinbase Global, Inc. during the time period.

Request No. 115. Please produce all executed agreements between Defendants Coinbase, Inc. and Coinbase Global, Inc., including, but not limited to, all contracts, memoranda of understanding, supporting Documents, and any amendments thereto.

Request No. 116. Please produce all executive/management committee materials and all materials for any committee comprised of any board of director members, including, but not limited to, packages, exhibits, and meeting minutes, of Defendant Coinbase Global, Inc. during the time period.

Dated: April 29, 2024
Washington, D.C.

/s/ Patrick R. Costello

Patrick R. Costello
Nicholas C. Margida
SECURITIES AND EXCHANGE COMMISSION
100 F. Street NE
Washington, DC 20549

Peter A. Mancuso
Jorge G. Tenreiro
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100 Pearl Street, Suite 20-100
New York, New York 10004

Counsel for Plaintiff
Securities and Exchange Commission

CERTIFICATE OF SERVICE

I certify that on April 29, 2024, I caused the foregoing Plaintiff's First Request for Production to be served by electronic mail on Defendants' counsel at the following addresses:

William Savitt, wdsavitt@wlrk.com
Kevin S. Schwartz, kschwartz@wlrk.com
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/s/ Patrick R. Costello
Patrick R. Costello

Counsel for Plaintiff

EXHIBIT M

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
CORPORATION FINANCE

December 7, 2020

Brian Armstrong
Chief Executive Officer
Coinbase Global, Inc.
c/o The Corporation Trust Company
1209 Orange Street
Wilmington, DE 19801

Re: Coinbase Global, Inc.
Draft Registration Statement on Form S-1
Submitted October 9, 2020
CIK No. 0001679788

Dear Mr. Armstrong:

We have reviewed your draft registration statement and have the following comments. In some of our comments, we may ask you to provide us with information so we may better understand your disclosure.

Please respond to this letter by providing the requested information and either submitting an amended draft registration statement or publicly filing your registration statement on EDGAR. If you do not believe our comments apply to your facts and circumstances or do not believe an amendment is appropriate, please tell us why in your response.

After reviewing the information you provide in response to these comments and your amended draft registration statement or filed registration statement, we may have additional comments.

Draft Registration Statement on Form S-1 submitted October 9, 2020

General

1. Please clarify for us whether the Class T common stock will be issued and outstanding prior to the effective date of the registration statement. In addition, assuming the Class T common stock is outstanding prior to effectiveness, please tell us how you intend to identify the price at which Class T common stock holders will offer their shares for resale following the effectiveness of the registration statement and prior to the emergence of any public market for such securities. Please refer to Item 501(b)(3) of Regulation S-K.

2. Please provide us with your legal analysis why the issuance of Class T shares in token

form does not represent the issuance of a security different from the uncertificated security. In your analysis, please provide a detailed explanation of why a single class of securities may be held in different forms with different rights under applicable state law.

3. Please provide us with your legal analysis as to why the offering of Class T common stock should not be treated as an indirect primary offering. Please refer to Securities Act Rules Compliance and Disclosure Interpretations 612.09, which is available on our website.

4. Please refer to the carryover risk factor paragraph on pages 26-27. Please provide us with your legal analysis as to why you believe you can conclude that the crypto assets traded on your core platform are not securities and, therefore, you are not facilitating, or causing you to engage in, transactions in unregistered securities. In your response, please specifically address how you "determine with a reasonable degree of certainty" that crypto assets are not securities for purposes of the federal securities laws. In preparing your response, you may find useful the letter sent by the SEC's Strategic Hub for Innovation and Financial Technology to The New York State Department of Financial Services on January 27, 2020, which letter is available on our website at https://www.sec.gov/files/staff-comments-to%20nysdfs-1-27-20.pdf.

5. Please provide us with your legal analysis as to why your activities supporting staking are executed in compliance with the federal securities laws.

6. You state in the first full bullet point on page 67 that you intend to host an investor day and engage in certain other investor education meetings. Please clarify the intended scope and timing of these investor education meetings, including whether they are follow-up meetings to answer questions about information provided at the investor day, or something more. In addition, please clarify whether the Company will cease all marketing and investor education activities and observe a restricted period in connection with the pricing of the direct listing.

7. Please provide mockups of any pages that include any additional pictures or graphics to be presented, including any accompanying captions. For guidance, refer to Securities Act Forms Compliance and Disclosure Interpretation 101.02.

8. While we understand you do not have a principal executive office, please add to the cover page of the registration statement your primary business telephone number, if you have one.

Cover page

9. Please refer to the fifth paragraph. Please revise the discussion of the timing of Goldman Sachs's obligations by clarifying whether Goldman Sachs (as financial advisor) is obligated to notify Nasdaq that the shares are "ready to trade" before, during, or after Nasdaq is to calculate the Current Reference Price (Opening Price). The disclosure as currently drafted appears to indicate that Goldman Sachs must make a subsequent or separate determination to "approve proceeding at the Current Reference Price." Please

similarly revise the corresponding disclosure in Plan of Distribution.

10. You state that both Goldman Sachs and J.P. Morgan in their roles as financial advisors will consult with Nasdaq. Please tell us how this is consistent with the Nasdaq direct listing rule permitting only one financial advisor to be "designated" for purposes of consulting with the exchange and performing the "ready to trade" duties and other functions. Alternatively, please revise here and in the first paragraph on page 177 to clarify the financial advisors' respective roles in the direct listing.

About This Prospectus, page ii

11. Please explain the basis for indicating that changes to the plan of distribution may be made in a prospectus supplement. In this regard, we note your obligation pursuant to the undertakings in Part II of the registration statement to file during any period in which offers or sales are being made a post-effective amendment to include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information.

Prospectus Summary
Our Token – Class T Common Stock, page 6

12. Please clarify here and throughout the prospectus whether the benefits you intend to provide to holders of the Class T common stock will depend on whether the stock is held in certificated form represented by a security token. In addition, please tell us whether such benefits would constitute terms and conditions of the security, and please tell us the basis for your position.

Implications of Being an Emerging Growth Company, page 9

13. Please provide us copies of all written communications, as defined in Rule 405 under the Securities Act, that you, or anyone authorized to do so on your behalf, present to potential investors in reliance on Section 5(d) of the Securities Act, whether or not they retain copies of the communications. Please contact J. Nolan McWilliams at the number below to discuss how to submit the materials, if any, for our review.

Risk Factors
Our operating results have and will significantly fluctuate, page 14

14. Please place this risk factor in context by quantifying the volatility in crypto assets in recent periods.

A particular crypto asset's status as a "security" in any relevant jurisdiction is subject to a high degree of uncertainty, page 26

15. We note your disclosure that "[t]he test for determining whether any given crypto a is a security is a highly complex, fact-driven analysis that evolves over time, and the outcome

is difficult to predict." Please emphasize that this test is a legal test and is different than your scoring model, which is not a legal standard and only a risk-based assessment that does not preclude legal or regulatory action based on the presence of a security.

16. We note your disclosure that "[p]ublic statements by senior officials at the SEC indicate that the SEC does not intend to take the position that Bitcoin or Ether are securities (in their current form)." Please revise this risk factor to clarify that Bitcoin and Ether are the only digital assets as to which senior officials at the SEC have publicly expressed such a view, and further clarify that as to all other digital assets there is currently no certainty under the applicable legal test that such assets are not securities, notwithstanding the predictions of your scoring model.

We may suffer losses due to abrupt and erratic market movements, page 39

17. We note from media accounts that trading has been disabled or temporarily halted in the past year. Please place this risk factor in context by quantifying the number, frequency, and average duration of outages in the last year and any material expenses or other damages as a result.

Risks Related to Crypto Assets

A temporary or permanent blockchain "fork" to any supported crypto asset, page 41

18. Please tell us and disclose your policy for accounting for forks and airdrops. Your disclosure should address your policy related to digital assets owned by you as well as those held by you through custodial accounts.

Risks Related to our Class T Common Stock, page 60

19. Please expand your risk factor disclosure relating to holding and trading Class T common stock in token form. In doing so, please address the particular risks arising from the different or limited rights that holders of Class T common stock in token form will have compared to holders of certificated securities.

The registration and listing of our Class A common stock, page 66

20. Please remove the implication of an intention to engage in price manipulation by deleting the following language from the fifth sentence of the first bullet point: “to help stabilize, maintain, or affect the public price” and “on the Nasdaq Global Select Market immediately after the listing.”

Management's Discussion and Analysis of Financial Condition and Results of Operations, page 89

21. We note crypto assets held totaled $38.5 million and $33.9 million as of June 30, 2020 and December 31, 2019, respectively. Please provide us a rollforward of your crypto assets held for each period presented which includes or reconciles to crypto asset amounts disclosed in your Consolidated Statement of Cash Flows.

Overview, page 89

22. Please describe any known trends or uncertainties that have had, or that you reasonably expect will have, a material favorable or unfavorable impact on revenue or results of operations. For example, you state that you expect volatility in trading volume to decrease as institutional trading increases and as you expand the number of supported crypto assets. Please discuss the extent to which decreased volatility and shifting the mix of users and crypto assets are expected to materially impact revenues and profitability. Refer to Item 303(a) of Regulation S-K and Section III.B.3 of Release No. 33-8350.

Our Business Model, page 90

23. Please expand your discussion of crypto asset price cycles, including qualitative and quantitative information, so that investors can better understand the duration and volatility of price cycles and the extent to which volatility in the cryptoeconomy is related to broader economic cycles.

24. Please refer to the third paragraph of this section. Please discuss specifically how you "manage Coinbase to break-even over price volatility cycles."

Key Business Metrics, page 91

25. We note disclosure on page 16 that transaction fees generated with the purchase, sale, and trading of Bitcoin and Ether drove over 65% of total trading volume on your platform during the six-months ended June 30, 2020. Please revise to quantify material crypto asset concentrations in trading volumes, transactions fees, and other key performance metrics for each period provided.

26. You state that Verified Users, Monthly Active Users, and Assets on Platform are an indication of scale, engagement with your platform, and monetization opportunities. Please discuss the relationship of each of these metrics to net revenues and revenues from products and services.

Assets on Platform, page 93

27. Please refer to the chart on page 93. Please break out the components of Assets on Platform by quantity, price, and types of assets and discuss the reasons for period over period fluctuations by component.

Trading Volume, page 93

28. Please refer to the chart on page 94. Please explain the reasons for period over period fluctuations in Retail Users' Trading Volume, Institutions' Trading Volume, and 3 Month Volatility. Also please discuss the extent to which fluctuations in 3 Month Volatility correlate or are predictive of retail and institutional trading volume.

Key Factors Affecting Our Performance
Investments in growth, page 95

29. Please quantity the estimated investments in development of products and service, sales and marketing, and internationally and discuss key milestones and time frames to implement each of these strategies. To the extent this is not known for a particular growth strategy, please briefly describe the factors you will consider in determining the amount and timing of investments.

Strategic acquisitions, investments, and partnerships, page 96

30. We note disclosure that you plan to enter into a variety of strategic partnerships with various companies that contribute to your ability to scale your business, including but not limited to, partnerships that allow you to increase traffic to your platform, bridge traditional finance with cryptocurrency, and expand your current product offerings. We also note disclosure of partnerships with Centre Consortium on page 29, PayPal on page 119, and a multinational corporation related to your Spend product on pages 120 and 122. Please revise your filing to discuss the benefits of these partnerships including how they will impact future financial results.

Components of Results of Operations
Other revenue, page 97

31. We note disclosure that periodically, as an accommodation to customers, you may fulfill customer transactions using your own crypto assets. To the extent the accommodations become material, please revise to more fully explain the economic and other reason(s) why you provide this accommodation, why these transactions wouldn't be fulfilled by customers on your trading platform, and to provide any other information needed to allow an investor to understand the potential benefits and costs and the impact on your financial results or business from these transactions.

Transaction expense, page 97

32. We note disclosure that included within transaction expenses are crypto asset losses due to transaction reversals and that these losses increased by $6.2 million during the six months ended June 30, 2020 due to a 55% increase in trading volume. Please revise to more clearly describe why and how you incur costs and losses related to transaction reversals and tell us if fee reversals are included in this amount noting your disclosure on page 106 regarding the estimate of fee reversals included in revenue. Please disclose total transaction reversal losses recognized for each period presented along with a discussion of the underlying reason for material trends and discuss any policies and procedures used to manage this risk.

Critical Accounting Policies and Estimates
Revenue recognition, page 105

33. We note disclosure that in certain instances, transaction fees can be collected in crypto assets with revenues measured based on the amount of crypto assets received and the fair value of the crypto assets at the time of the transaction. Please revise to discuss:

- the prevalence of collecting transaction fees in crypto assets and quantify if material,
- if you typically hold these crypto assets or convert them into fiat currency after receipt, and
- how you manage the fair value risk associated with crypto assets received.

Business
Welcome to the Cryptoeconomy, page 112

34. Please discuss here crypto asset forks and airdrops and describe the criteria you use in determining whether to support forked or airdropped crypto assets. Also please provide us the basis for your belief that you are not required to support any fork or provide any benefit of any forked crypto asset to your customers. We note the second to last paragraph of the full risk factor on page 41.

What Sets Us Apart
We have a trusted platform, page 117

35. Please briefly provide the basis of your belief that you have a “trusted platform” and substantiate that you have the industry’s largest insurance policy.

Growth Strategy, page 118

36. Please revise, where appropriate, to disclose the more than 30 crypto assets you allow customers to invest in and the more the 50 crypto assets you store on your platform as disclosed on page 120.

Our Products
Retail, page 122

37. We note disclosure on page 123 that for your Save product customers earn rewards in the form of USDC and Dai, which are stablecoins that you earn commissions on when customers earn rewards. Please revise to disclose who issues these stablecoins as rewards and how these rewards are reflected in your financial statements. Additionally, as we note holdings of USDC on your balance sheet on page F-4, please tell us the amount of Dai held at each period end presented.

Committees of the Board of Directors, page 136

38. Please discuss the extent of the board’s and the audit and compliance committee’s role in

overseeing cybersecurity risk management. Please refer to Item 407(h) of Regulation S-K and the Commission Statement and Guidance on Public Company Cybersecurity Disclosures (Feb. 26, 2018).

Certain Relationships and Related Party Transactions
Investors' Rights Agreement, page 151

39. Please identify by name the holders of your convertible preferred stock who are parties to the investors' rights agreement.

Principal and Registered Stockholders, page 154

40. Please clearly identify the selling security holders. In particular, please disclose the amount of securities to be offered for each security holder's account as well as the amount and (if one percent or more) the percentage of the class to be owned by such security holder after completion of the offering. In addition, please disclose the name of each of the selling security holders you have aggregated in the categories labeled "Non-Executive Officer and Non-Director Service Providers" and "All Other Registered Stockholders" and provide for each of them the information required by Item 507 of Regulation S-K, or tell us why you believe such disclosure is not required.

Class A Common Stock, Class B Common Stock, and Class T Common Stock
Conversion, page 159

41. Please refer to the second paragraph on page 160. Please disclose the circumstances under which you believe the committee of disinterested directors would choose to convert Class T common stock into Class A common stock. In addition, please disclose how they would establish the conversion price and notify holders in the event they elected to effect a conversion. In your response, please address whether the process and procedures for a conversion would be different if the Class T common stock were quoted on an alternative trading system.

Form, page 160

42. You state that holders may elect to hold shares of Class T common stock in certificated form represented by a security token. Please expand this section to disclose in detail the differences between holding such securities in certificated form and token form. In this regard, we note your risk factor disclosure beginning on page 60, which describes a variety of differences, some of which implicate fundamental rights of security ownership, such as voting and receiving dividends. In addition, please disclose the process for exchanging securities in certificated form for securities in token form, as well as how tokens will be issued, who will hold the public and private keys for the tokens, who will establish the blockchain and how the tokens will be transferred and recorded on the blockchain. Further, please explain in detail how you will determine who is eligible to vote shares represented by tokens, who is eligible to receive dividends or other payments

on such shares and what direct rights token holders will have and how they will be able to exercise those rights.

Our Token – Class T Common Stock, page 166

43. To the extent known, please clarify whether you intend to register the Class T common stock or any other class of digital securities you may issue in the future under Section 12 of the Exchange Act.

44. Please refer to the second paragraph. Please clarify whether you intend to provide benefits to holders who are directors, officers, or related parties.

45. Please tell us how you would likely structure any future issuance of shares of Class T common stock to your customers in connection with customer reward or loyalty programs to comply with the federal securities laws, including, but not limited to, the registration requirements of the Securities Act.

Plan of Distribution, page 176

46. Please disclose that the holders of Class T common stock who are offering their securities for resale pursuant to this registration statement may be deemed to be statutory underwriters.

47. Please clarify whether you intend for the term "registered stockholders" to include their pledgees, donees, transferees, or others in terms of the registrant's existing stockholders who may or may not sell their shares immediately at the open of trading on Nasdaq.

48. Please refer to the second full paragraph on page 178. Please disclose whether Goldman Sachs, J.P. Morgan, or any other financial advisors will also serve in the capacity of an "active market maker" in connection with this direct listing and, if so, briefly describe the scope and timing of their activities in contrast to those of a financial advisor.

Index to Consolidated Financial Statements, page F-1

49. Please revise to include audited statements for the fiscal year ended December 31, 2018 or confirm that you intend to include two years of audited financial statements and related MD&A disclosure in an amendment prior to distributing a preliminary prospectus to investors. Refer to General Instruction II.C of Form S-1 for guidance.

Report of Independent Registered Public Accounting Firm, page F-2

50. Please revise to include a report of the independent registered public accounting firm indicating that their audit was conducted in accordance with the standards of the PCAOB, rather than only the auditing standards. Refer to the guidance in paragraph .09 of AS3101.

Note 2. Summary of Significant Accounting Policies
Customer custodial funds and custodial funds due to customers, page F-12

51. We note that you have customer custodial funds in segregated accounts. These funds represent cash deposits held by customers in their fiat wallets and unsettled transaction payables. Please tell us and revise to discuss if you segregate customer custodial funds as a result of a regulatory requirement or for another reason. Additionally, please revise to disclose your accounting policy for your customer custodial funds and tell us the accounting guidance supporting recognition of these amounts on your balance sheet.

Note 4. Acquisitions
Neutrino, page F-19

52. Please tell us the accounting guidance that supports your accounting of the $7.4 million held in an escrow fund for former stockholders of Neutrino S.r.l at the acquisition date and subsequent to the acquisition date when you released the funds and recognized the amount as a technology and development expense in your consolidated statement of operations. Specifically, tell us how you considered the guidance starting in ASC 805-10-25-13 as to whether the separation agreement entered into soon after the acquisition should be reflected as a measurement period adjustment to the initial accounting for the acquisition of Neutrino.

Xapo, page F-20

53. Please tell us the accounting guidance that supports measuring the contingent consideration at fair value with subsequent changes in fair value being recognized in net income or loss for your acquisition of the customer relationships and institutional custody business of Xapo, Inc. Specifically tell us how you considered whether the transaction should be accounted for as an acquisition of assets rather than a business with contingent consideration not meeting the definition of a derivative typically accounted for in accordance with ASC 450.

Note 5. Revenue
Staking revenue, page F-22

54. We note your disclosure here that the Company participates in networks with proof-of-stake consensus algorithms, through creating or validating blocks on the network. In exchange for participating in the consensus mechanism of these networks, the Company earns rewards in the form of the native token of the network. We further note your disclosure on page 35, that as a service to customers, you operate staking nodes on certain blockchain networks utilizing customers' crypto assets and pass through the rewards received to those customers, less a service fee.

Please provide us with the following additional information concerning your staking services:

- Provide us with a more detailed description of the nature of your staking services. In your response please elaborate on how the staking process operates, how you provide services and generate revenue from that process and how your arrangements with customers are structured.
- Confirm whether staking revenue presented on page F-21 represents staking revenue earned from activities performed on your own account, performed on behalf your customers, or both. If both, separately quantify the related staking revenues recognized during each period presented and tell us where these amounts are recognized on your statements of operations.
- Describe the nature of your staking expenses and quantify them separately for each period presented; and
- Quantify rewards received, rewards passed through to customers, and service fees earned during each period presented and reconcile such amounts to the staking revenues disclosed on page F-21.

Note 8. Goodwill and Intangible Assets, page F-25

55. Please revise to separately disclose each material crypto asset held and its value as of each period end presented.

You may contact John Spitz, Staff Accountant, at (202) 551-3484 or Michael Volley, Staff Accountant, at (202) 551-3437 if you have questions regarding comments on the financial statements and related matters. Please contact J. Nolan McWilliams, Attorney-Advisor, at (202) 551-3217 or Dietrich King, Attorney-Advisor, at (202) 551-8071 with any other questions.

Sincerely,

Division of Corporation Finance
Office of Finance

cc: Michael A. Brown, Esq.

EXHIBIT N

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

GAME STOPPED? WHO WINS AND LOSES WHEN SHORT SELLERS, SOCIAL MEDIA, AND RETAIL INVESTORS COLLIDE, PART III

VIRTUAL HEARING

BEFORE THE

COMMITTEE ON FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTEENTH CONGRESS

FIRST SESSION

MAY 6, 2021

Printed for the use of the Committee on Financial Services

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HOUSE COMMITTEE ON FINANCIAL SERVICES

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GREGORY W. MEEKS, New York
DAVID SCOTT, Georgia
AL GREEN, Texas
EMANUEL CLEAVER, Missouri
ED PERLMUTTER, Colorado
JIM A. HIMES, Connecticut
BILL FOSTER, Illinois
JOYCE BEATTY, Ohio
JUAN VARGAS, California
JOSH GOTTHEIMER, New Jersey
VICENTE GONZALEZ, Texas
AL LAWSON, Florida
MICHAEL SAN NICOLAS, Guam
CINDY AXNE, Iowa
SEAN CASTEN, Illinois
AYANNA PRESSLEY, Massachusetts
RITCHIE TORRES, New York
STEPHEN F. LYNCH, Massachusetts
ALMA ADAMS, North Carolina
RASHIDA TLAIB, Michigan
MADELEINE DEAN, Pennsylvania
ALEXANDRIA OCASIO-CORTEZ, New York
JESÚS "CHUY" GARCIA, Illinois
SYLVIA GARCIA, Texas
NIKEMA WILLIAMS, Georgia
JAKE AUCHINCLOSS, Massachusetts

PATRICK MCHENRY, North Carolina, *Ranking Member*
FRANK D. LUCAS, Oklahoma
BILL POSEY, Florida
BLAINE LUETKEMEYER, Missouri
BILL HUIZENGA, Michigan
ANN WAGNER, Missouri
ANDY BARR, Kentucky
ROGER WILLIAMS, Texas
FRENCH HILL, Arkansas
TOM EMMER, Minnesota
LEE M. ZELDIN, New York
BARRY LOUDERMILK, Georgia
ALEXANDER X. MOONEY, West Virginia
WARREN DAVIDSON, Ohio
TED BUDD, North Carolina
DAVID KUSTOFF, Tennessee
TREY HOLLINGSWORTH, Indiana
ANTHONY GONZALEZ, Ohio
JOHN ROSE, Tennessee
BRYAN STEIL, Wisconsin
LANCE GOODEN, Texas
WILLIAM TIMMONS, South Carolina
VAN TAYLOR, Texas
PETE SESSIONS, Texas

CHARLA OUERTATANI, *Staff Director*

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GAME STOPPED? WHO WINS AND LOSES WHEN SHORT SELLERS, SOCIAL MEDIA, AND RETAIL INVESTORS COLLIDE, PART III

Thursday, May 6, 2021

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The committee met, pursuant to notice, at 12 p.m., via Webex, Hon. Maxine Waters [chairwoman of the committee] presiding.

Members present: Representatives Waters, Maloney, Sherman, Meeks, Scott, Green, Cleaver, Perlmutter, Himes, Foster, Vargas, Gottheimer, Lawson, Axne, Casten, Torres, Adams, Tlaib, Dean, Garcia of Illinois, Williams of Georgia, Auchincloss; McHenry, Lucas, Posey, Luetkemeyer, Huizenga, Wagner, Barr, Williams of Texas, Hill, Zeldin, Loudermilk, Mooney, Davidson, Budd, Kustoff, Hollingsworth, Gonzalez of Ohio, Rose, Steil, Timmons, and Taylor.

Chairwoman WATERS. The Financial Services Committee will come to order.

Without objection, the Chair is authorized to declare a recess of the committee at any time.

As a reminder, I ask all Members to keep themselves muted when they are not being recognized by the Chair. The staff has been instructed not to mute Members except when a Member is not being recognized by the Chair and there is inadvertent background noise.

Members are also reminded that they may only participate in one remote proceeding at a time. If you are participating today, please keep your camera on, and if you choose to attend a different remote proceeding, please turn your camera off.

Today's hearing is entitled, "Game Stopped? Who Wins and Loses When Short Sellers, Social Media, and Retail Investors Collide, Part III."

I now recognize myself for 4 minutes to give an opening statement.

Today, this committee convenes for part three of our series of hearings focused on market volatility related to GameStop and other stocks. In our first hearing on those events, we received testimony from the CEOs of trading app, Robinhood; Wall Street firms, Citadel and Melvin Capital; and social media company, Reddit; as well as Keith Gill, a trader involved in WallStreetsBets on subreddit. We heard directly from those involved in the short squeeze and volatility and we got the facts.

In our second hearing, we received testimony from a number of capital markets experts and investor advocates to hear their views and begin to assess possible legislative and regulatory steps that may be necessary. We examined conflicts of interest in the market. We scrutinized payment for order flow, potential systemic risks to our financial system, the gamification of trading, the clearance and settlement process for trades, and the evolution of trading with the rising use of social media and new technologies.

Today, we will focus on the regulatory response to the market volatility. Specifically, we will hear testimony from the U.S. Securities and Exchange Commission (SEC), the Financial Industry Regulatory Authority (FINRA), and the Deposit Trust and Clearing Corporation (DTCC) about their responses to events we are examining. It is critical for our cops on the block at the SEC to protect investors and ensure that our markets are transparent and fair. Unfortunately, the previous Administration's appointees to financial regulatory agencies were often more interested in helping out Wall Street than protecting Main Street.

I am very pleased that, thanks to President Biden's strong leadership, we now have Gary Gensler at the helm of the SEC. Chair Gensler, I look forward to hearing your testimony and discussing your views on the short squeeze and surrounding events, as well as practices like payment for order flow.

I am also interested in hearing from Mr. Cook and Mr. Bodson, the CEOs of private-sector corporation, FINRA, which oversees broker-dealers; and DTCC, which provides clearing and settlement services to our securities markets, respectively.

Under my leadership, this committee is focused on ensuring accountability for Wall Street. I decided to convene this series of three hearings on this topic to ensure that Congress is well-informed on developments in and functioning of our capital markets, and to put Wall Street on notice that we are watching closely.

I yield back the balance of my time, and I now recognize the ranking member of the committee, the gentleman from North Carolina, Mr. McHenry, for 4 minutes.

Mr. MCHENRY. Thank you, Madam Chairwoman. I would like to talk about what was learned at our last hearing on GameStop, We learned that everyday Americans have a newfound interest in the markets, and that is positive. We learned that financial technology is here to stay, and it is providing more opportunities for retail investors to participate in our markets. That is positive. We learned that Reddit is powerful. And we learned that Roaring Kitty is indeed not a cat, and we know just as much as we did at the first hearing.

And I continue to hear the same policy solutions from my Democrat colleagues, the repackaged, old, outdated, policy failures wrapped in whatever is in the news this week to sell the American people on the idea that this time is different. Well, it is not. Like so many other bad progressive ideas sold under the guise of investor protection, which I think is important, Democrats' proposals will ultimately reduce access to investment opportunities and charge D.C. bureaucrats and give them control of investing decisions of everyday Americans. If this committee is interested in re-

sponding to late January's events, we need to expand the credit investor regime, not restrict it.

It is ridiculous that our securities laws force most everyday Americans to the sidelines of early-growth investment opportunities. We need to find innovative solutions that allow more people to invest in businesses they support, while retaining the flexibility our changing workforce needs and requires.

This week I reintroduced my bill, the Gig Worker Equity Compensation Act, to expand the category of workers that can benefit from equity compensation to include nontraditional workers. If you want to see the juxtaposition of Democrat and Republican priorities right now, just yesterday, the Biden Administration moved to dismantle past efforts to provide gig workers with the flexibility they demand, that they need, that they require. If a State as liberal as California can recognize that a one-size-fits-all mandate on gig workers would be destructive, it should be obvious that the Biden Administration should not take those same actions that went down at the ballot box in California, actions that hurt nontraditional workers, not help them.

I initially called for this hearing on GameStop to begin the process of fact finding to inform our policy discussions, and the bottom line is that we are still gathering a number of facts. That is why we have representatives from FINRA and DTCC testifying before us today. I think that is a good thing.

Additionally, the SEC's review of the events is ongoing, as is the committee's work behind-the-scenes in terms of document review and interviews. Despite the ongoing investigations and the testimony we will receive today, many Democrats have their so-called solutions. A lot of these things have been kicked around for a long time.

At our first GameStop hearing, I asked Democrats to side with everyday American investors. I will ask that same thing today. We should not punish everyday American investors with a Democrat agenda, a progressive agenda that results in fewer investment options or forces folks to start paying to make trades again. So, let's go off of what we have learned. Let's stand up for everyday investors and make it easier for them to invest, and let's tear down barriers keeping folks out of the market instead of throwing up new ones to impair their ability to be in the market. Let's stand up for equity—true equity—and that is ownership of the American economy, and ownership in our capital markets so we can remain the center of the free world's economic policies.

And with that, Madam Chairwoman, I yield back.

Chairwoman WATERS. Thank you very much, Mr. McHenry. I am pleased that you see something good about our hearing today.

I now recognize the gentleman from California, Mr. Sherman, who is also the Chair of our Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets, for 1 minute.

Mr. SHERMAN. I thank Chairman Gensler for being here, and I hope he joins us often. The ranking member is concerned about whether gig workers in my State have the protection that we accord employees. It is a little far from the mandate of our committee. But within our committee's jurisdiction is to make sure that when investors trade stocks, they get the best possible deal and are

not told that there is zero transaction cost when the big transaction cost is the spread, and you are paying for the transaction unless you are getting the best possible price improvement. Price improvement may not be fully available if your broker is getting paid for order flow or if your broker is acting as a market-maker.

We also need to look at short-sale disclosures. Right now, there are disclosures filed with the SEC quarterly. That is so 1977. We would expect reports to be filed far more often, and we have to discuss what reports should be made public, and I look forward also to looking at margin selling.

Chairwoman WATERS. Thank you. I now recognize the ranking member of the subcommittee, the gentleman from Michigan, Mr. Huizenga, for 1 minute.

Mr. HUIZENGA. Thanks, Madam Chairwoman. Advancements in technology have improved access to our capital markets and created new opportunities for countless Americans to participate in our markets who were previously excluded. App-based interfaces, combined with zero commission trades, fractional share trading, and lowered account minimums, have ushered in a new generation of investors. However, instead of celebrating this new era of investment, how have my colleagues across the aisle responded for the most part? By falsely claiming that this increase in market participation has caused gamification in the experience, that markets are rigged, and some have even gone so far as to equating it to gambling in a casino.

As Rahm Emanuel famously said, "You never want a serious crisis to go to waste. It is an opportunity to do things that you think you could not do before." Well, that is exactly what my friends on the other side of the aisle are doing. They are exploiting a high-profile situation to push a radical progressive agenda of these proposed, small "D," democratic solutions that will only further prevent everyday American investors from accessing our capital markets, and deny them the opportunity to further save and invest for a more prosperous future.

I yield back.

Chairwoman WATERS. Thank you. I want to now welcome today's distinguished witnesses to the committee.

First, we have the Honorable Gary Gensler, who is the recently-confirmed Chair of the U.S. Securities and Exchange Commission. This is Chair Gensler's first time appearing before the committee in his current capacity. He has previously served as Chair of the Commodity Futures Trading Commission, and in several senior roles at the Department of the Treasury.

Second, we have Mr. Michael Bodson, who is the President and Chief Executive Officer of the Depository Trust & Clearing Corporation (DTCC).

And finally, we have Mr. Robert Cook, who is the President and Chief Executive Officer of the Financial Industry Regulatory Authority (FINRA).

Each of you will have 5 minutes to summarize your testimony. You should be able to see a timer on your screen that will indicate how much time you have left, and a chime will go off at the end of your time. I would ask you to be mindful of the timer, and quick-

ly wrap up your testimony if you hear the chime. And without objection, your written statements will be made a part of the record.

Chair Gensler, you are now recognized for 5 minutes to present your oral testimony.

STATEMENT OF THE HONORABLE GARY GENSLER, CHAIRMAN, U.S. SECURITIES AND EXCHANGE COMMISSION (SEC)

Mr. GENSLER. Good afternoon, Chairwoman Waters, Ranking Member McHenry, and members of the committee. I am honored to appear before you today for the first time as Chair of the Securities and Exchange Commission. I have been in front of this committee multiple times in multiple Administrations, and I will say this: I look forward to the day when we can meet in person in your beautiful hearing room again.

Thank you for inviting me to testify about January's market volatility, and I am pleased to be here with Mike Bodson and Robert Cook, whom I have known for a number of years as well.

I would like to note that my views are my own, and I am not speaking on behalf of my fellow Commissioners or of the SEC staff.

These events are part of a larger story about the intersection of finance and technology, which have lived in a symbiotic relationship since antiquity. And one thing that I have come to believe is that technology can allow greater access to our capital markets. Our central question is this, though: When new technologies come along and change the face of finance, as they have done for decades, how do we continue to achieve our core public policy goals?

In my role, I will always be animated by thinking about working families in the SEC's three-part mission: protecting investors; promoting fair, orderly, and efficient markets; and facilitating capital formation. I am pleased to submit written testimony that goes into detail on several factors at play during January's events. I will just highlight a few of those key issues in this opening statement.

The first is gamification and user experience. I agree with the Members who have already said that these new user experiences have facilitated a lot of opportunity for investors. They have expanded access to capital, making it easier for investors to sign up, start trading, and learn about investing. These apps also use a host of features that have come to be familiar in our increasingly-online world such as gamification, behavioral props, and predictive data analytics. Many of these features, in essence, encourage investors to trade more frequently. This could have a substantial effect on a saver's financial position. Some academic studies suggest that the more actively you trade, the lower your returns, so while they are encouraging investing, they may also be encouraging active trading.

I have asked the staff to prepare a request for public comment on these issues. The SEC must remain attuned to rapidly-changing technologies with an eye to freshening up our rule set, where appropriate, to continue to achieve our mission. If we don't address this now, the investing public, those saving for future retirement and education, may shoulder the burden later.

The second topic I would like to discuss is this area around payment for order flow. This practice brings to mind a number of questions, including whether it creates inherent conflicts of interest be-

tween the broker-dealers on the one side, and their customers on the other, who want to achieve, under our rules, best execution. Now, it is important to consider this, I think, in the overall context of market structure. Currently, a significant amount of retail orders are routed to a small number of wholesalers. I detail this more in my written testimony, but I think it raises questions about whether the market structure best promotes fair, orderly, and efficient markets. Evolving market technologies, along with this payment for order flow, has also led to increasing market concentration, which we have found, and history and economics show, can lead to fragility in markets, deter healthy competition, and limit innovation.

The next issue is short selling and market transparency, and, again, as outlined in my written testimony, under the Dodd-Frank Act reforms, the SEC received mandates and authorities to increase transparency in the markets. So, I have asked SEC staff to prepare recommendations on transparency and short selling, stock loan markets, and something called total return swaps, which was at the center of this Archegos event in March, for Commission consideration. And the five of us Commissioners can take a look to see what to do next.

Next, today's social media tools have far greater reach, scale, and anonymity than previous technology. This raises the possibility that wrongdoers will attempt to use their powerful forums to hype certain stocks or manipulate markets. I am not concerned about regular investors exercising their free speech rights online; I am more concerned whether bad actors potentially take advantage of influential platforms.

Further, the decisions by some broker-dealers to redirect customer trading raised several issues around clearance and settlement. In essence, they stopped investors from investing, and this raises questions of the market, what I will call, "plumbing." Sorry to Mike Bodson if I call infrastructure, "plumbing," but investors were shut out. I do believe we can lower costs and risk in our market by shortening the settlement cycle. For instance, I have asked SEC staff to put together a draft proposal for the Commission on the possibility of shortening the settlement cycles.

Thank you. I look forward to your questions. It is good to be back with you, and, again, I look forward to doing this in person.

[The prepared statement of Chairman Gensler can be found on page 89 of the appendix.]

Chairwoman WATERS. Thank you, Chair Gensler. Next, we will go to Mr. Bodson. You are now recognized for 5 minutes to present your oral testimony.

STATEMENT OF MICHAEL C. BODSON, PRESIDENT AND CHIEF EXECUTIVE OFFICER, THE DEPOSITORY TRUST & CLEARING CORPORATION (DTCC)

Mr. BODSON. Chairwoman Waters, Ranking Member McHenry, and members of the committee, my name is Michael Bodson, and I am the CEO of The Depository Trust & Clearing Corporation (DTCC), a holding company that operates three SEC-regulated clearing agencies, including the National Securities Clearing Cor-

poration, or NSCC, of which I will speak to you today. I appreciate this opportunity to speak to the committee.

In my line of work, the best days are those when nothing too exciting happens. That is because DTCC is, at its heart, a risk management organization enhancing efficiencies and reliability in the markets. On a normal day, we process about 200 million buys and sells for a value of nearly $2 trillion. Through netting, that is reduced to about $1 million in securities movement and $35 billion in cash movement, creating significant efficiencies in the market.

When you buy or sell a stock, it takes 2 days for the trade to be completed. This is called T+2 settlement: trade date plus 2 days. A lot could happen during those 2 days that could create a risk that the buyer or seller fails to deliver money or shares. Because of clearing, investors don't have to worry about that. Clearing protects both firms and their customers against default risk. Default risk can destabilize markets, particularly in volatile times. People are reluctant to trade if they aren't sure they will get what they agreed to. And imagine how inefficient it would be for every market participant to have to assess the creditworthiness of everyone else in the market.

That is where DTCC comes in. We are infrastructure. You can call us, "plumbing." We are not insulted. We operate behind the scenes to guarantee completion of virtually all equity trades. We do not trade or take positions or bet on the direction in the market. We do not give investment advice. We do not know who the customers are behind the trades or their reasons for trading. We simply process and risk-manage trades.

DTCC protects against default risk by collecting margin, which is money that clearing members post as collateral. If a declaring member defaults between trade date and settlement date, DTCC uses that collateral to complete the defaulting member's trades no matter how much prices may have changed.

Margin requirements are calculated using statistical models and model-based calculations that are set forth in our rules, which must be approved by the SEC. Margin requirements increase the risk, and the member's portfolio increases. In other words, the greater the potential loss the default could produce, the greater the need for collateral.

Volatility has a very large impact on margin requirements. We saw this play out during the week of January 25th. Both volume and volatility that week were extraordinary, exceeding the pandemic-related record volume from March 2020 by more than 100 million trades. The concentration of trading in a small number of meme stocks that week was also extraordinary. Applying those statistical models of formulas, margin requirements increased substantially for firms with large volumes in these stocks.

I appreciate that this committee is exploring ways to continue to improve our markets. I would like to describe one effort that DTCC has undertaken to date, which is shortening the settlement cycle for equities from 2 days to 1 day. That may sound like a small thing if it is just 1 day, but cutting the settlement period in half can make a difference. We believe that shortening the settlement cycle to T+1 would enhance market resilience, reduce margin requirements, and lower costs for investors. Following a multi-year,

industry-wide effort, settlements were shortened in 2017 from T+3 to T+2, achieving margin savings estimated at 25 percent. DTCC estimates that the volatility component of margin requirement could potentially be reduced by 40 percent when it moves to T+1. This could save our clearing members upwards of $6 billion per day during periods of extreme volatility.

While DTCC's technology can support T+1 today, changing the industry convention is a major undertaking that will require coordinated efforts across the whole industry. Over the past year, DTCC has engaged with a cross-section of the industry to assess readiness to further shorten the settlement cycle. In February, DTCC published a White Paper outlining the benefits associated with multiple changes to the settlement cycle, including a move to T+1. We are working with the Securities Industry and Financial Markets Association (SIFMA) and the Investment Company Institute (ICI) to accelerate this effort.

Thank you again for the opportunity to testify today. I look forward to your questions.

[The prepared statement of Mr. Bodson can be found on page 70 of the appendix.]

Chairwoman WATERS. Thank you very much, Mr. Bodson. Mr. Cook, you are now recognized for 5 minutes to present your oral testimony.

STATEMENT OF ROBERT W. COOK, PRESIDENT AND CHIEF EXECUTIVE OFFICER, FINANCIAL INDUSTRY REGULATORY AUTHORITY (FINRA)

Mr. COOK. Thank you, Chairwoman Waters, Ranking Member McHenry, and members of the committee for this opportunity to testify today, together with Chair Gensler and Mr. Bodson, regarding the January market events related to trading in GameStop and in other stocks. We commend the committee's review of these events and related investor protection concerns.

FINRA's mission is to protect investors and promote market integrity. We are a not-for-profit self-regulatory organization (SRO), and we support the SEC in overseeing one critical part of the securities industry: certain broker-dealers and the individuals they employ. To that end, we administer comprehensive regulatory programs, including surveillance, risk monitoring, examination, and enforcement. And we, in turn, are subject to comprehensive examination and oversight by the SEC.

This committee has heard already about the events of January, including the significant price swings and trading volume in GameStop and a limited number of other stocks. In this context, some broker-dealers restricted trading in these securities on a short-term basis. This led to confusion and frustration among some investors and concerns about the fairness of the markets. The event also focused attention on the growth of popular new retail trading platforms and services, changes in investor behavior, and the influence of social media on the markets.

Our markets are dynamic and are continually evolving. Market participants constantly innovate new technologies, methods of communication, and investment products and services. These innovations often benefit investors, such as by providing easier access to

the markets, lower costs, and a wider range of investment products and services to choose from, but they can also present new and sometimes unanticipated risks, so regulators must constantly review whether the rules governing the road need to be updated in light of new developments to better protect investors, while still facilitating vibrant and innovative markets and the opportunities these create. At FINRA, we are committed to doing just that. One important resource we rely on in this process is the research of the FINRA Investor Education Foundation, including recent research on new, inexperienced investors, and how they approach investing.

Since the events of January, FINRA has established an internal working group that is devoting significant resources to investigating whether its broker-dealer members comply with SEC and FINRA rules. We have also issued regulatory notices reminding firms of relevant duties and responsibilities in this area.

Although I cannot comment on specific firms or ongoing investigations or enforcement matters, generally speaking, we are reviewing order routing practices, the circumstances under which trading restrictions were imposed, any potential manipulative conduct, and compliance with short-sale requirements, among other matters. I can assure the committee that we will take all appropriate disciplinary or other remedial action as warranted if the facts indicate a violation of SEC or FINRA rules.

The upcoming SEC report on these market events will be critical in analyzing whether existing rules and standards should be updated. Many of the policy questions raised in your hearings to date involve areas in which the SEC has primary policymaking responsibilities such as market structure, payment for order flow, short sale regulation and disclosure, the settlement cycle, enhanced broker-dealer financial responsibility requirements, and whether certain communications with retail investors constitute recommendations that should be covered by the SEC's Regulation Best Interest. We will support the SEC in its review of these areas and then align FINRA's rules and oversight activities where necessary or appropriate.

My written testimony offers some further perspectives on key topics under the SEC's jurisdiction and also describes some areas where we are considering whether updates to guidance regarding our own rules would be appropriate. For example, we intend to review short sale position reporting by broker-dealers, as well as continue our review of the effects of gamification on retail investors. FINRA looks forward to working with this committee, the SEC, and our fellow regulators to review and learn from these recent market events so that we can strengthen investor protections and enhance confidence in our nation's capital markets.

Thank you, and I would be happy to answer your questions.

[The prepared statement of Mr. Cook can be found on page 76 of the appendix.]

Chairwoman WATERS. Thank you very much, Mr. Cook.

I now recognize myself for 5 minutes for questions, and my first question is for Chair Gensler. This committee has examined numerous issues that have arisen out of the GameStop short squeeze that took place earlier this year, including systemic risk arising from firms such as Citadel, who are executing close to 50 percent

of all U.S.-listed retail volume. During the first hearing, I questioned whether Citadel poses a systemic risk to our financial markets. I am also concerned about what Citadel's outsized market impact means for pricing and best execution, another market structure issue that this committee has examined as part of these hearings.

As the newly-confirmed Chair of the SEC, what will your approach be with respect to mitigating the risk associated with outsized market impact and understanding threats to our financial stability?

Mr. GENSLER. Thank you for that question. I think that at the heart of well-functioning markets and the mission of the SEC—fair, orderly, and efficient markets—is promoting competition in markets. It can be done through transparency, but it is also looking at our rule set to make sure that our rule set inspires more competition rather than concentration. And we have seen, as you noted in your hearing, an increasing concentration in market making, and also, separately, in brokerage, and particularly around retail order flow.

And so I have asked the staff from the Divisions of Economic Risk and Analysis, and Trading and Markets, to sort of give us a view, give internally the Commission a view of what we should be thinking about in our market structure to address this.

We have seen such concentration come in other markets. We know it is in search. When we all go online and search, there is really one dominant search engine. We know it is true in retail buying, retail products online. There is some dominance to that. And so, our modern 2020's economy does tend towards certain, what is called economics network effects. So, I have asked the staff just to think through that and to provide us with guidance as Commissioners on how do we promote competition in the face of these network economic effects that are leading to concentration.

Chairwoman WATERS. I want to thank you for that response, and I think what I am hearing from you is that there is real concern about concentration. And while you have instructed staff to do some additional research to determine the extent of it, it is something that we should be concerned about, is that correct?

Mr. GENSLER. Yes. I think that capital formation for issuers and for investors on the other side benefit from some broad competition amongst market actors. And as we get more concentration in the middle market, whether it is market making or brokerage, we could lose that concentration. It could lead to more fragile markets, meaning less orderly, and also more costly or less efficient markets. And that is what history and economics tell us when we get concentration.

Chairwoman WATERS. Thank you very much. I appreciate the concern that you are identifying as we talked about this concentration, and what could happen if, in fact, we are not aware of it and don't make an effort to deal with it.

I now recognize the ranking member, Mr. McHenry, for his questions.

Mr. MCHENRY. Thank you, Madam Chairwoman. Chairman Gensler, thank you for being here, and welcome back before the committee, and congratulations on your new role. I know that Act-

ing Chair Lee, at the time of this GameStop trade, emphasized that the core market infrastructure is quite resilient. Does the Commission intend to release any additional findings?

Mr. GENSLER. Thank you. And thank you for our meeting earlier this week. I look forward to doing those on a regular basis with the Chair, and you, and the subcommittee, and other members. We are looking at putting together a report. I am only in my 3rd week on the job, but our economists, our Trading and Markets folks have come together, and I think we will be releasing a report sometime this summer that will detail the range of activities out of the January events.

Mr. MCHENRY. Thank you for that. Small businesses right now are emerging from the pandemic just like everyone is, and these small businesses need access to capital. And, as you know, I have been focused on some of the burdensome requirements of the original Regulation Crowdfunding (Reg CF), which I helped legislate, and President Obama signed into law. There have been some helpful changes made to Reg CF to make it more efficient and to boost trading in Reg A and Reg CF securities, such as preemption under certain State regulations. Do you support these streamlining efforts for small businesses, and are you looking at additional steps?

Mr. GENSLER. I look forward to working with you and your staff to learn more about your initiatives and suggestions. But at the core, and maybe it is just a bit because my dad had a small business, never more than 30 employees, and didn't have access to the capital markets, but I think that small business, entrepreneur efforts are really kind of, if I might say, a bit of the backbone of American entrepreneurism and our economy. And so, access to the capital markets is a critical piece, whether it is accessing loans that might be securitized in the markets or accessing through equities. But I look forward to hearing more from you and your staff on ideas.

Mr. MCHENRY. Okay. But no comment on Reg CF?

Mr. GENSLER. Again, I'm just 3 weeks on the job, so I haven't looked closely at Reg CF yet or, frankly, done a detailed enough briefing to see how we can, as you say, and I really do believe this, facilitate capital formation up and down the issue or spectrum.

Mr. MCHENRY. Let's pivot to something that you spent some time out of government understanding. I think what we all have tried to seek is greater collaboration across agencies on the regulatory framework for digital assets, cryptocurrencies, notably. This includes more engagement from industry and appropriate regulators. In 2019, SEC staff produced the framework for investment contract analysis of digital assets. Since then, the staff has sought feedback on a number of issues, most recently on the evolving standards and the best practices for custody. This is progress, but I believe more concrete steps are necessary to further the crypto market. As you look at this issue, what steps can you outline to bring regulatory clarity so that we can have a vibrant digital asset marketplace with legitimate money and the rule of law?

Mr. GENSLER. Thank you for asking that. And I think that this market, which is close to $2 trillion, the crypto asset market, is one that could benefit from greater investor protection within the SEC's current authorities, our authorities around securities, and around

asset managers and products that might invest in these cryptocurrencies. As you mentioned, we put out a comment, I think it was in October or November, asking for feedback on custody. I would hope that we would move forward and provide greater clarity around custody.

I do think that working with Congress, and I think it is only Congress that could really address it, it would be good to consider, if you would ask my thoughts, to consider whether to bring greater investor protection to the crypto exchanges. And I think if that were the case, because right now the exchanges trading in these crypto assets do not have a regulatory framework either at the SEC, or our sister agency, the Commodity Futures Trading Commission, that could instill greater confidence. Right now, there is not a market regulator around these crypto exchanges, and, thus, there is really not a protection against fraud or manipulation or a—

Mr. MCHENRY. I have time for one final question, Chairman Gensler. I am encouraged by your comments on crypto. Last year, the Commission proposed to allow certain gig workers to have access to equity compensation under the SEC's rules. Will you commit to finishing this important rulemaking?

Mr. GENSLER. Again, I'm in my 3rd week, so I need to get a briefing on it. I commit to work with the staff to understand what the comments were, because I don't know what comments came in, and to trying to understand the economics around that rule set.

Mr. MCHENRY. Thank you, and I wish you great luck in your tenure, and thank you for your testimony. Thank you for your outreach.

Mr. GENSLER. Thank you.

Chairwoman WATERS. I now recognize the gentlewoman from New York, Mrs. Maloney, for 5 minutes.

[No response.]

Chairwoman WATERS. We will go on to the gentlewoman from New York, Ms. Velazquez.

[No response.]

Chairwoman WATERS. The gentleman from California, Mr. Sherman, who is also the Chair of our Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets, is now recognized for 5 minutes.

Mr. SHERMAN. Responding to the ranking member, who wants to instill confidence in those buying and selling cryptocurrencies, the only confidence I have is the U.S. dollar is an outstanding good currency, but cryptocurrencies, if they succeed, will have unique appeal to only two groups: narco-terrorists; and tax evaders. And for us to channel the animal spirits that should be investing in the American economy into creating tools for those who want to evade U.S. taxes is a step toward a much weaker America.

Mr. Gensler, you talked about Archegos and the total return swap. The image I have of 1929 is investors jumping out of buildings on Wall Street because they bought stock at 7, 8, 9 times margin. And in the 1930s, we decided to protect the markets and say that if you want to buy stock, the most margin you could get was 1-time margins, sometimes a little more. But we then see that using a total return swap, the big guys, like Archegos, can get 7

times margin, can invest only one-seventh of the cash to control $100 million worth of this block of shares or that block of shares.

This raises the question, is 7-to-1 margin fine for everybody, and is that good for the markets? Should 1-time margin either rule for everybody and we should plug the loopholes, or should we continue to have a system where, if you are a family office, you can have 7 times margin by calling it a total return slot, and if you are the regular Robinhood investor, you can only get 1 time? What should the market rule be?

Mr. GENSLER. I think you raise some very important questions that came out of the market events late in March, not the January ones but the March events around a family office, Archegos. Family offices are outside of much of the SEC's remit, but not all of it.

Mr. SHERMAN. If I can clarify, this is not a question about family offices.

Mr. GENSLER. Oh, okay.

Mr. SHERMAN. Just that one investment company that has $1 billion and decides they want a 7-to-1 margin. The fact this was a family office, put that aside. Whether you disclose it or you don't, whether you are a family office or a hedge fund or a billionaire, should you be able to get 7-to-1 margin, and if so, why can't Robinhood?

Mr. GENSLER. I have asked staff to better understand—and, again, it is just the 3rd week—the rules that were adopted by the SEC that are yet to go into final implementation around the margin and for these securities-based swaps, and how they would have affected the circumstances.

Mr. SHERMAN. I look forward—

Mr. GENSLER. But you are right, sir, that they are different than the retail investor, and this is true across our markets. And I have asked staff to better inform me as to what are we seeing there.

Mr. SHERMAN. For Mr. Cook, when it comes to disclosing short selling, there are arguments on both sides as to whether to disclose what an individual investor is doing. Some say it is harmful, some say it is helpful, but there seems to be agreement that the aggregate information is helpful, but we ought to know in aggregate how many shares of GameStop are short. You generate that information, but you don't put it on your website. I am told that you provide it to the exchanges and they publish it if they want to, and, often behind a pay wall. Why doesn't FINRA disclose all this information to everybody for free as quickly as you can?

Mr. COOK. Thank you, Mr. Sherman. That is a great question. As we look at disclosure around short selling, I think there are some good arguments that we can do more here. I have asked our staff to prepare a regulatory notice to solicit comment on changes to FINRA's disclosure here to make it more frequent and more granular. And certainly as part of that, we can look at the way in which that disclosure is disseminated.

Mr. SHERMAN. Is there any justification for what is a regulatory agency generating this information and giving it to private companies for them to sell rather than disclosing it to the public?

Mr. COOK. I appreciate the gist of your question, sir, and I am inclined to be biased towards making it publicly available. I don't understand all the history behind how this developed. I think that

EXHIBIT O

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, **Plaintiff,** **-against-** **COINBASE, INC. AND COINBASE GLOBAL, INC.** **Defendants.**	**23 Civ. 04738 (KPF)**

PLAINTIFF'S RESPONSES AND OBJECTIONS TO DEFENDANTS' FIRST SET OF REQUESTS FOR ADMISSION

Pursuant to Rules 26 and 36 of the Federal Rules of Civil Procedure ("Federal Rules") and the Local Rules of the U.S. District Court for the Southern District of New York ("Local Civil Rules"), Plaintiff Securities and Exchange Commission (the "Commission," "SEC," or "Plaintiff") hereby responds to Defendants Coinbase, Inc. and Coinbase Global, Inc.'s (collectively, "Defendants" or "Coinbase") First Set of Requests for Admission ("Requests").

The Commission's responses and objections to the Requests are made to the best of its present knowledge, information, and belief. These responses and objections are made without prejudice to the Commission's right to revise or supplement its responses and objections as appropriate and to rely upon and produce or object to evidence, witnesses, facts, writings, or documents that are identified either herein or in any later supplements or amendments. By responding and objecting below, the Commission does not intend to—and does not—waive any applicable privilege, protection, or right that may prevent the disclosure of any such information.

DEFINITIONS USED IN THE RESPONSES AND OBJECTIONS

1. The "Investigation" means the Commission's Division of Enforcement staff's investigation captioned *In the Matter of Coinbase, Inc.* conducted under File Nos. HO-14315 and SF-04523.

2. The "Action" means the instant, above-captioned Commission civil enforcement action.

3. The "Exchange Act" means the Securities Exchange Act of 1934 (15 U.S.C. § 78a *et seq.*)

OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS

1. The Commission objects to Defendants' Definition No. 18 ("Investigation") to the extent it means the "investigation(s) of individuals and entities" outside of the investigation conducted under File Nos. HO-14315 and SF-04523 (*see* defined term, "Investigation" above), because it is overbroad, unduly burdensome, oppressive, and not proportional to the needs of the case.

2. The Commission objects to Defendants' Definition No. 19 ("Person") to the extent it is inconsistent with and/or seeks impermissibly to expand the definition of the term "person" set forth in Local Civil Rule 26.3(c)(6). In responding and objecting to the Requests, the Commission will apply the definition of "person" set forth in Local Civil Rule 26.3(c)(6), and no other such definition.

3. The Commission objects to Defendants' Definition No. 20 ("SEC", "Commission", "you", or "your") to the extent it is inconsistent with and/or seeks impermissibly to expand the definition of the term "plaintiff" set forth in Local Civil Rule 26.3(c)(5), and to the extent that it purports to include within the scope of any Request Commission divisions and persons who did not conduct the Investigation or this Action. To the extent that any Request seeks information in the possession of Commission divisions, offices, or employees of the Commission other than those who

conducted the Investigation and litigation, the Commission objects to any such Request on the grounds that it seeks information that is not relevant to any party's claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses, is overbroad, unduly burdensome, and not proportional to the needs of the case. Unless otherwise stated below, the Commission's Responses and Objections are based only on the knowledge of employees of the Commission who conducted the Investigation and litigation in this Action.

4. The Commission objects to Defendants' Definitions and Instructions, including but not limited to Nos. 25, 26, and 27, to the extent that any of them purport to impose greater obligations on the Commission than the Federal Rules of Civil Procedure.

5. The Commission objects to Defendants' Definitions and Instructions to the extent that any of them differ from the way those terms are used in the Exchange Act, the Federal Rules of Civil Procedure, or in the Commission's Complaint in this Action.

SPECIFIC RESPONSES AND OBJECTIONS

The Commission adopts and incorporates by reference the foregoing Objections to Definitions and Instructions in response to each numbered request below. Upon request by Defendants, the Commission is willing to meet and confer regarding its responses and objections to Defendants' Requests.

Request for Admission No. 1

Admit that a SOL token itself is not a Security.

Answer: The Commission objects to Request No. 1 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission also objects to the Request to the extent it improperly seeks a legal conclusion instead of the application of law to specific facts. *See* Fed. R. Civ. P. 36(a)(1)(A). The Commission further objects to the Request as vague and ambiguous because it is unclear what the undefined term "token itself" means in the context of this Request. Subject to and without waiving its objections, the Commission states that it cannot truthfully admit or deny this Request because (1) the

term "token itself" is undefined, vague and ambiguous; and (2) this Request improperly seeks an answer to a hypothetical question. *Rubinstein v. Music Sales Corp.*, 2021 WL 3374539, at *3 (S.D.N.Y. Aug. 3, 2021) ("Requests for admission that call for the answer to hypothetical questions are not proper."). The Commission avers that the legal attributes of "a SOL token itself," cannot be evaluated in isolation without considering the full set of expectations and understandings surrounding the sale and distribution of the token. *Accord SEC v. Coinbase, Inc.*, 2024 WL 1304037, at *25 (S.D.N.Y. Mar. 27, 2024) ("When a customer purchases a token on Coinbase's platform, she is not just purchasing a token, which in and of itself is valueless; rather, she is buying into the token's digital ecosystem, the growth of which is necessarily tied to value of the token."). Whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances surround its offer and sale. To the extent a response is required, then subject to and without waiving its objections, the Commission denies this Request.

Request for Admission No. 2

Admit that an ADA token itself is not a Security.

Answer: The Commission objects to Request No. 2 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission also objects to the Request to the extent it improperly seeks a legal conclusion instead of the application of law to specific facts. *See* Fed. R. Civ. P. 36(a)(1)(A). The Commission further objects to the Request as vague and ambiguous because it is unclear what the undefined term "token itself" means in the context of this Request. Subject to and without waiving its objections, the Commission states that it cannot truthfully admit or deny this Request because (1) the term "token itself" is undefined, vague and ambiguous; and (2) this Request improperly seeks an answer to a hypothetical question. *Rubinstein v. Music Sales Corp.*, 2021 WL 3374539, at *3 (S.D.N.Y. Aug. 3, 2021) ("Requests for admission that call for the answer to hypothetical questions are not proper."). The Commission avers that the legal attributes of "an ADA token itself," cannot be evaluated in isolation without considering the full set of expectations and understandings surrounding the sale and distribution of the token. *Accord SEC v. Coinbase, Inc.*, 2024 WL 1304037, at *25 (S.D.N.Y. Mar. 27, 2024) ("When a customer purchases a token on Coinbase's platform, she is not just purchasing a token, which in and of itself is valueless; rather, she is buying into the token's digital ecosystem, the growth of which is necessarily tied to value of the token."). Whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances surround its offer and sale. To the extent a response is required, then subject to and without waiving its objections, the Commission denies this Request.

Request for Admission No. 3

Admit that a MATIC token itself is not a Security.

Answer: The Commission objects to Request No. 3 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission also objects to the Request to the extent it improperly seeks a legal conclusion instead of the application of law to specific facts. *See* Fed. R. Civ. P. 36(a)(1)(A). The Commission further objects to the Request as vague and ambiguous because it is unclear what the

undefined term "token itself" means in the context of this Request. Subject to and without waiving its objections, the Commission states that it cannot truthfully admit or deny this Request because (1) the term "token itself" is undefined, vague and ambiguous; and (2) this Request improperly seeks an answer to a hypothetical question. *Rubinstein v. Music Sales Corp.*, 2021 WL 3374539, at *3 (S.D.N.Y. Aug. 3, 2021) ("Requests for admission that call for the answer to hypothetical questions are not proper."). The Commission avers that the legal attributes of "a MATIC token itself," cannot be evaluated in isolation without considering the full set of expectations and understandings surrounding the sale and distribution of the token. *Accord SEC v. Coinbase, Inc.*, 2024 WL 1304037, at *25 (S.D.N.Y. Mar. 27, 2024) ("When a customer purchases a token on Coinbase's platform, she is not just purchasing a token, which in and of itself is valueless; rather, she is buying into the token's digital ecosystem, the growth of which is necessarily tied to value of the token."). Whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances surround its offer and sale. To the extent a response is required, then subject to and without waiving its objections, the Commission denies this Request.

Request for Admission No. 4

Admit that a FIL token itself is not a Security.

Answer: The Commission objects to Request No. 4 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission also objects to the Request to the extent it improperly seeks a legal conclusion instead of the application of law to specific facts. *See* Fed. R. Civ. P. 36(a)(1)(A). The Commission further objects to the Request as vague and ambiguous because it is unclear what the undefined term "token itself" means in the context of this Request. Subject to and without waiving its objections, the Commission states that it cannot truthfully admit or deny this Request because (1) the term "token itself" is undefined, vague and ambiguous; and (2) this Request improperly seeks an answer to a hypothetical question. *Rubinstein v. Music Sales Corp.*, 2021 WL 3374539, at *3 (S.D.N.Y. Aug. 3, 2021) ("Requests for admission that call for the answer to hypothetical questions are not proper."). The Commission avers that the legal attributes of "a FIL token itself," cannot be evaluated in isolation without considering the full set of expectations and understandings surrounding the sale and distribution of the token. *Accord SEC v. Coinbase, Inc.*, 2024 WL 1304037, at *25 (S.D.N.Y. Mar. 27, 2024) ("When a customer purchases a token on Coinbase's platform, she is not just purchasing a token, which in and of itself is valueless; rather, she is buying into the token's digital ecosystem, the growth of which is necessarily tied to value of the token."). Whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances surround its offer and sale. To the extent a response is required, then subject to and without waiving its objections, the Commission denies this Request.

Request for Admission No. 5

Admit that a SAND token itself is not a Security.

Answer: The Commission objects to Request No. 5 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission also objects to the Request to the extent it improperly seeks

a legal conclusion instead of the application of law to specific facts. *See* Fed. R. Civ. P. 36(a)(1)(A). The Commission further objects to the Request as vague and ambiguous because it is unclear what the undefined term "token itself" means in the context of this Request. Subject to and without waiving its objections, the Commission states that it cannot truthfully admit or deny this Request because (1) the term "token itself" is undefined, vague and ambiguous; and (2) this Request improperly seeks an answer to a hypothetical question. *Rubinstein v. Music Sales Corp.*, 2021 WL 3374539, at *3 (S.D.N.Y. Aug. 3, 2021) ("Requests for admission that call for the answer to hypothetical questions are not proper."). The Commission avers that the legal attributes of "a SAND token itself," cannot be evaluated in isolation without considering the full set of expectations and understandings surrounding the sale and distribution of the token. *Accord SEC v. Coinbase, Inc.*, 2024 WL 1304037, at *25 (S.D.N.Y. Mar. 27, 2024) ("When a customer purchases a token on Coinbase's platform, she is not just purchasing a token, which in and of itself is valueless; rather, she is buying into the token's digital ecosystem, the growth of which is necessarily tied to value of the token."). Whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances surround its offer and sale. To the extent a response is required, then subject to and without waiving its objections, the Commission denies this Request.

Request for Admission No. 6

Admit that an AXS token itself is not a Security.

Answer: The Commission objects to Request No. 6 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission also objects to the Request to the extent it improperly seeks a legal conclusion instead of the application of law to specific facts. *See* Fed. R. Civ. P. 36(a)(1)(A). The Commission further objects to the Request as vague and ambiguous because it is unclear what the undefined term "token itself" means in the context of this Request. Subject to and without waiving its objections, the Commission states that it cannot truthfully admit or deny this Request because (1) the term "token itself" is undefined, vague and ambiguous; and (2) this Request improperly seeks an answer to a hypothetical question. *Rubinstein v. Music Sales Corp.*, 2021 WL 3374539, at *3 (S.D.N.Y. Aug. 3, 2021) ("Requests for admission that call for the answer to hypothetical questions are not proper."). The Commission avers that the legal attributes of "an AXS token itself," cannot be evaluated in isolation without considering the full set of expectations and understandings surrounding the sale and distribution of the token. *Accord SEC v. Coinbase, Inc.*, 2024 WL 1304037, at *25 (S.D.N.Y. Mar. 27, 2024) ("When a customer purchases a token on Coinbase's platform, she is not just purchasing a token, which in and of itself is valueless; rather, she is buying into the token's digital ecosystem, the growth of which is necessarily tied to value of the token."). Whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances surround its offer and sale. To the extent a response is required, then subject to and without waiving its objections, the Commission denies this Request.

Request for Admission No. 7

Admit that a VGX token itself is not a Security.

Answer: The Commission objects to Request No. 7 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a

defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission also objects to the Request to the extent it improperly seeks a legal conclusion instead of the application of law to specific facts. *See* Fed. R. Civ. P. 36(a)(1)(A). The Commission further objects to the Request as vague and ambiguous because it is unclear what the undefined term "token itself" means in the context of this Request. Subject to and without waiving its objections, the Commission states that it cannot truthfully admit or deny this Request because (1) the term "token itself" is undefined, vague and ambiguous; and (2) this Request improperly seeks an answer to a hypothetical question. *Rubinstein v. Music Sales Corp.*, 2021 WL 3374539, at *3 (S.D.N.Y. Aug. 3, 2021) ("Requests for admission that call for the answer to hypothetical questions are not proper."). The Commission avers that the legal attributes of "a VGX token itself," cannot be evaluated in isolation without considering the full set of expectations and understandings surrounding the sale and distribution of the token. *Accord SEC v. Coinbase, Inc.*, 2024 WL 1304037, at *25 (S.D.N.Y. Mar. 27, 2024) ("When a customer purchases a token on Coinbase's platform, she is not just purchasing a token, which in and of itself is valueless; rather, she is buying into the token's digital ecosystem, the growth of which is necessarily tied to value of the token."). Whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances surround its offer and sale. To the extent a response is required, then subject to and without waiving its objections, the Commission denies this Request.

Request for Admission No. 8

Admit that a CHZ token itself is not a Security.

Answer: The Commission objects to Request No. 8 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission also objects to the Request to the extent it improperly seeks a legal conclusion instead of the application of law to specific facts. *See* Fed. R. Civ. P. 36(a)(1)(A). The Commission further objects to the Request as vague and ambiguous because it is unclear what the undefined term "token itself" means in the context of this Request. Subject to and without waiving its objections, the Commission states that it cannot truthfully admit or deny this Request because (1) the term "token itself" is undefined, vague and ambiguous; and (2) this Request improperly seeks an answer to a hypothetical question. *Rubinstein v. Music Sales Corp.*, 2021 WL 3374539, at *3 (S.D.N.Y. Aug. 3, 2021) ("Requests for admission that call for the answer to hypothetical questions are not proper."). The Commission avers that the legal attributes of "a CHZ token itself," cannot be evaluated in isolation without considering the full set of expectations and understandings surrounding the sale and distribution of the token. *Accord SEC v. Coinbase, Inc.*, 2024 WL 1304037, at *25 (S.D.N.Y. Mar. 27, 2024) ("When a customer purchases a token on Coinbase's platform, she is not just purchasing a token, which in and of itself is valueless; rather, she is buying into the token's digital ecosystem, the growth of which is necessarily tied to value of the token."). Whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances surround its offer and sale. To the extent a response is required, then subject to and without waiving its objections, the Commission denies this Request.

Request for Admission No. 9

Admit that a FLOW token itself is not a Security.

Answer: The Commission objects to Request No. 9 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission also objects to the Request to the extent it improperly seeks a legal conclusion instead of the application of law to specific facts. *See* Fed. R. Civ. P. 36(a)(1)(A). The Commission further objects to the Request as vague and ambiguous because it is unclear what the undefined term "token itself" means in the context of this Request. Subject to and without waiving its objections, the Commission states that it cannot truthfully admit or deny this Request because (1) the term "token itself" is undefined, vague and ambiguous; and (2) this Request improperly seeks an answer to a hypothetical question. *Rubinstein v. Music Sales Corp.*, 2021 WL 3374539, at *3 (S.D.N.Y. Aug. 3, 2021) ("Requests for admission that call for the answer to hypothetical questions are not proper."). The Commission avers that the legal attributes of "a FLOW token itself," cannot be evaluated in isolation without considering the full set of expectations and understandings surrounding the sale and distribution of the token. *Accord SEC v. Coinbase, Inc.*, 2024 WL 1304037, at *25 (S.D.N.Y. Mar. 27, 2024) ("When a customer purchases a token on Coinbase's platform, she is not just purchasing a token, which in and of itself is valueless; rather, she is buying into the token's digital ecosystem, the growth of which is necessarily tied to value of the token."). Whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances surround its offer and sale. To the extent a response is required, then subject to and without waiving its objections, the Commission denies this Request.

Request for Admission No. 10

Admit that an ICP token itself is not a Security.

Answer: The Commission objects to Request No. 10 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission also objects to the Request to the extent it improperly seeks a legal conclusion instead of the application of law to specific facts. *See* Fed. R. Civ. P. 36(a)(1)(A). The Commission further objects to the Request as vague and ambiguous because it is unclear what the undefined term "token itself" means in the context of this Request. Subject to and without waiving its objections, the Commission states that it cannot truthfully admit or deny this Request because (1) the term "token itself" is undefined, vague and ambiguous; and (2) this Request improperly seeks an answer to a hypothetical question. *Rubinstein v. Music Sales Corp.*, 2021 WL 3374539, at *3 (S.D.N.Y. Aug. 3, 2021) ("Requests for admission that call for the answer to hypothetical questions are not proper."). The Commission avers that the legal attributes of "an ICP token itself," cannot be evaluated in isolation without considering the full set of expectations and understandings surrounding the sale and distribution of the token. *Accord SEC v. Coinbase, Inc.*, 2024 WL 1304037, at *25 (S.D.N.Y. Mar. 27, 2024) ("When a customer purchases a token on Coinbase's platform, she is not just purchasing a token, which in and of itself is valueless; rather, she is buying into the token's digital ecosystem, the growth of which is necessarily tied to value of the token."). Whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances surround its offer and sale. To the extent a response is required, then subject to and without waiving its objections, the Commission denies this Request.

Request for Admission No. 11

Admit that a NEAR token itself is not a Security.

Answer: The Commission objects to Request No. 11 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission also objects to the Request to the extent it improperly seeks a legal conclusion instead of the application of law to specific facts. *See* Fed. R. Civ. P. 36(a)(1)(A). The Commission further objects to the Request as vague and ambiguous because it is unclear what the undefined term "token itself" means in the context of this Request. Subject to and without waiving its objections, the Commission states that it cannot truthfully admit or deny this Request because (1) the term "token itself" is undefined, vague and ambiguous; and (2) this Request improperly seeks an answer to a hypothetical question. *Rubinstein v. Music Sales Corp.*, 2021 WL 3374539, at *3 (S.D.N.Y. Aug. 3, 2021) ("Requests for admission that call for the answer to hypothetical questions are not proper."). The Commission avers that the legal attributes of "a NEAR token itself," cannot be evaluated in isolation without considering the full set of expectations and understandings surrounding the sale and distribution of the token. *Accord SEC v. Coinbase, Inc.*, 2024 WL 1304037, at *25 (S.D.N.Y. Mar. 27, 2024) ("When a customer purchases a token on Coinbase's platform, she is not just purchasing a token, which in and of itself is valueless; rather, she is buying into the token's digital ecosystem, the growth of which is necessarily tied to value of the token."). Whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances surround its offer and sale. To the extent a response is required, then subject to and without waiving its objections, the Commission denies this Request.

Request for Admission No. 12

Admit that a DASH token itself is not a Security.

Answer: The Commission objects to Request No. 12 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission also objects to the Request to the extent it improperly seeks a legal conclusion instead of the application of law to specific facts. *See* Fed. R. Civ. P. 36(a)(1)(A). The Commission further objects to the Request as vague and ambiguous because it is unclear what the undefined term "token itself" means in the context of this Request. Subject to and without waiving its objections, the Commission states that it cannot truthfully admit or deny this Request because (1) the term "token itself" is undefined, vague and ambiguous; and (2) this Request improperly seeks an answer to a hypothetical question. *Rubinstein v. Music Sales Corp.*, 2021 WL 3374539, at *3 (S.D.N.Y. Aug. 3, 2021) ("Requests for admission that call for the answer to hypothetical questions are not proper."). The Commission avers that the legal attributes of "a DASH token itself," cannot be evaluated in isolation without considering the full set of expectations and understandings surrounding the sale and distribution of the token. *Accord SEC v. Coinbase, Inc.*, 2024 WL 1304037, at *25 (S.D.N.Y. Mar. 27, 2024) ("When a customer purchases a token on Coinbase's platform, she is not just purchasing a token, which in and of itself is valueless; rather, she is buying into the token's digital ecosystem, the growth of which is necessarily tied to value of the token."). Whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances surround its offer and sale. To the extent a response is required, then subject to and

without waiving its objections, the Commission denies this Request.

Request for Admission No. 13

Admit that the SEC declared effective Coinbase Global, Inc.'s registration statement on Form S-1 on April 1, 2021.

Answer: The Commission objects to Request No. 13 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. Subject to and without waiving its objections, the Commission admits that Coinbase Global, Inc.'s registration statement on Form S-1 was declared effective by certain staff of the Commission's Division of Corporation Finance ("Division of Corporation Finance") pursuant to delegated authority on April 1, 2021. See 15 U.S.C. § 77h. Otherwise, denies.

Request for Admission No. 14

Admit that, in declaring effective Coinbase Global, Inc.'s registration statement on Form S-1, the SEC determined such declaration to be consistent with the public interest and the protection of investors.

Answer: The Commission objects to Request No. 14 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission also objects to the Request to the extent it improperly seeks a legal conclusion instead of the application of law to specific facts. See Fed. R. Civ. P. 36(a)(1)(A). Subject to and without waiving its objections, the Commission admits that at the time Coinbase Global, Inc.'s registration statement on Form S-1 was declared effective, certain staff of the Division of Corporation Finance pursuant to delegated authority gave "due regard to the adequacy of the information respecting [Coinbase Global, Inc.] theretofore available to the public, to the facility with which the nature of the securities to be registered, their relationship to the capital structure of [Coinbase Global, Inc.] and the rights of holders thereof can be understood, and to the public interest and the protection of investors." *See* 15 U.S.C. § 77h(a). Otherwise, denies.

Request for Admission No. 15

Admit that the SEC did not believe that the Coinbase Platform was an unregistered securities exchange when it declared effective Coinbase Global, Inc.'s registration statement on Form S-1.

Answer: The Commission objects to Request No. 15 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission also objects to the Request to the extent it improperly seeks a legal conclusion instead of the application of law to specific facts. See Fed. R. Civ. P. 36(a)(1)(A). The Commission further reiterates its Objection to Coinbase's Definition and Instruction No. 3, which improperly defines "the Commission" as including each of the SEC's over 4,500 employees. The Commission further objects that in reviewing Coinbase Global, Inc.'s registration statement on Form S-1, the Division of Corporation Finance staff did not determine the regulatory status of the Coinbase

Platform, rather it determined the adequacy of the disclosures, including material risk factors, in Coinbase Global, Inc.'s registration statement as required under the federal securities laws. Subject to and without waiving its objections, the Commission denies this Request.

Request for Admission No. 16

Admit that the SEC did not believe that Coinbase's Staking Services constituted the offer or sale of unregistered securities when it declared effective Coinbase Global, Inc.'s registration statement on Form S-1.

Answer: The Commission objects to Request No. 16 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission also objects to the Request to the extent it improperly seeks a legal conclusion instead of the application of law to specific facts. See Fed. R. Civ. P. 36(a)(1)(A). The Commission further reiterates its Objection to Coinbase's Definition and Instruction No. 3, which improperly defines "the Commission" as including each of the SEC's over 4,500 employees. The Commission further objects that in reviewing Coinbase Global, Inc.'s registration statement on Form S-1, the Division of Corporation Finance staff did not determine the regulatory status of Coinbase's Staking Services, rather it determined the adequacy of the disclosures, including material risk factors, in Coinbase Global, Inc.'s registration statement as required under the federal securities laws. Subject to and without waiving its objections, the Commission denies this Request.

Request for Admission No. 17

Admit that, on March 22, 2023, the SEC gave Coinbase a "Wells call" alleging that some transactions on Coinbase's Platform were unregistered securities transactions.

Answer: The Commission objects to Request No. 17 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses and because this Request for Admission seeks information that is available to Coinbase. The Commission also objects to the Request to the extent it improperly seeks discovery of information that the parties agreed was subject to and protected by Fed. R. Evid. 408. Subject to and without waiving its objections, the Commission admits that on March 22, 2023 Commission staff assigned to the Investigation spoke with and informed Coinbase's attorneys that the SEC staff had made a preliminary determination to recommend that the Commission file an enforcement action against Defendants, alleging violations of Sections 5, 15(a) and 17(A) of the Exchange Act. *See* Letters from SEC Staff to Defendants' Counsel, dated March 22, 2024 ("This letter confirms our telephone conversation earlier today. In that conversation, we advised you that the staff of the Securities and Exchange Commission has made a preliminary determination to recommend that the Commission file an enforcement action against" Defendants). Otherwise, denies.

Request for Admission No. 18

Admit that, during the SEC's March 22, 2023 "Wells call" with Coinbase, Coinbase asked the SEC to identify which Digital Assets that traded on the Coinbase Platform the SEC believed constitute securities.

Answer: The Commission objects to Request No. 18 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission also objects to the Request to the extent it improperly seeks discovery of information that the parties agreed was subject to and protected by Fed. R. Evid. 408. Subject to and without waiving its objections, the Commission admits that on March 22, 2023 Commission staff assigned to the Investigation spoke with Coinbase's attorneys and Coinbase's attorneys asked the staff to identify which crypto assets that traded on Coinbase's Platform the staff believed constitute securities. However, the Commission avers that Coinbase has been provided fair notice that it could be subject to an SEC enforcement action with respect to crypto assets that traded on its platform through, among other things: (1) *Howey* and decades of other judicial precedents interpreting the term "investment contract;" (2) the Commission's Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO (the "DAO Report"); and (3) the Commission's identification in other enforcement actions of crypto assets it believed constituted securities that Coinbase listed on its platform, such as AMP, DDX, LCX, OMG, POWR, RLY, and XYO; and, further, that Coinbase itself has demonstrated such notice by "establish[ing] a systematic analytical process for reviewing crypto assets" specifically to determine which "could be deemed 'securities' under the SEC's definition" (*See* Answer at ¶ 55). The Commission further avers that "the law does not require the Government to reach out and warn all potential violators on an individual or industry level" that their conduct violates the law. *SEC v. Kik Interactive Inc.*, 492 F. Supp. 3d 169, 183 (S.D.N.Y. 2020). Otherwise, denies.

Request for Admission No. 19

Admit that, in response to Coinbase's request during the SEC's March 22, 2023 "Wells call" that the SEC identify which Digital Assets traded on the Coinbase Platform the SEC believed constituted securities, the SEC stated that it was "not in a position to identify them."

Answer: The Commission objects to Request No. 19 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission also objects to the Request to the extent it improperly seeks discovery of information that the parties agreed was subject to and protected by Fed. R. Evid. 408. Subject to and without waiving its objections, the Commission admits that the Commission staff did not specifically identify on the March 22, 2023 telephone call between counsel which crypto assets trading on the Coinbase platform constituted securities. However, the Commission avers that Coinbase has been provided fair notice that it could be subject to an SEC enforcement action with respect to crypto assets that traded on its platform through, among other things: (1) *Howey* and decades of other judicial precedents interpreting the term "investment contract;" (2) the Commission's Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO (the "DAO Report"); and (3) the Commission's identification in other enforcement actions of crypto assets it believed constituted securities that Coinbase listed on its platform, such as AMP, DDX, LCX, OMG, POWR, RLY, and XYO; and, further, that Coinbase itself has demonstrated such notice by "establish[ing] a systematic analytical process for reviewing crypto assets" specifically to determine which "could be deemed 'securities' under the SEC's definition" (*See* Answer at ¶ 55). The Commission further avers that "the law does not require the Government to reach out and warn all potential violators on an individual or industry level" that their conduct violates the law. *SEC v. Kik Interactive Inc.*, 492 F. Supp. 3d 169, 183

(S.D.N.Y. 2020). Otherwise, denies.

Request for Admission No. 20

Admit that, prior to the filing of the Complaint, the SEC never identified to Coinbase any Digital Asset traded on Coinbase's Platform that the SEC believed constituted a security.

Answer: The Commission objects to Request No. 20 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission also objects to the Request to the extent it improperly seeks discovery of information that the parties agreed was subject to and protected by Fed. R. Evid. 408. Subject to and without waiving its objections, the Commission admits that prior to the filing of the Complaint, Commission staff assigned to the Investigation did not specifically identify to Coinbase which crypto assets that traded on Coinbase's Platform constituted a security. However, the Commission avers that Coinbase has been provided fair notice that it could be subject to an SEC enforcement action with respect to crypto assets that traded on its platform through, among other things: (1) *Howey* and decades of other judicial precedents interpreting the term "investment contract;" (2) the Commission's Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO (the "DAO Report"); and (3) the Commission's identification in other enforcement actions of crypto assets it believed constituted securities that Coinbase listed on its platform, such as AMP, DDX, LCX, OMG, POWR, RLY, and XYO; and, further, that Coinbase itself has demonstrated such notice by "establish[ing] a systematic analytical process for reviewing crypto assets" specifically to determine which "could be deemed 'securities' under the SEC's definition" (*See* Answer at ¶ 55). The Commission further avers that "the law does not require the Government to reach out and warn all potential violators on an individual or industry level" that their conduct violates the law. *SEC v. Kik Interactive Inc.*, 492 F. Supp. 3d 169, 183 (S.D.N.Y. 2020). Otherwise, denies.

Request for Admission No. 21

Admit that, prior to the filing of the Complaint, the SEC never identified to Coinbase any transactions in Digital Assets traded on Coinbase's Platform that the SEC believed constituted securities transactions.

Answer: The Commission objects to Request No. 21 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission also objects to the Request to the extent it improperly seeks discovery of information that the parties agreed was subject to and protected by Fed. R. Evid. 408. Subject to and without waiving its objections, the Commission admits that prior to the filing of the Complaint, Commission staff assigned to the Investigation did not specifically identify to Coinbase which transactions in crypto assets that traded on Coinbase's Platform constituted a security. However, the Commission avers that Coinbase has been provided fair notice that it could be subject to an SEC enforcement action with respect to crypto assets that traded on its platform through, among other things: (1) *Howey* and decades of other judicial precedents interpreting the term "investment contract;" (2) the Commission's Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO (the "DAO Report"); and (3) the Commission's identification in other enforcement actions of crypto assets it believed constituted securities that Coinbase listed on its platform, such as

AMP, DDX, LCX, OMG, POWR, RLY, and XYO; and, further, that Coinbase itself has demonstrated such notice by "establish[ing] a systematic analytical process for reviewing crypto assets" specifically to determine which "could be deemed 'securities' under the SEC's definition" (*See* Answer at ¶ 55). The Commission further avers that "the law does not require the Government to reach out and warn all potential violators on an individual or industry level" that their conduct violates the law. *SEC v. Kik Interactive Inc.*, 492 F. Supp. 3d 169, 183 (S.D.N.Y. 2020). Otherwise, denies.

Request for Admission No. 22

Admit that, before and as of April 1, 2021, the date of effectiveness of Coinbase Global, Inc.'s S-1, ADA was available to Coinbase's customers to buy, sell, or trade on Coinbase's Platform.

Answer: Admits.

Request for Admission No. 23

Admit that the SEC knew, when it declared effective Coinbase Global, Inc.'s S-1, that ADA was available to Coinbase's customers to buy, sell, or trade on Coinbase's Platform.

Answer: The Commission objects to Request No. 23 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further reiterates its Objection to Coinbase's Definition and Instruction No. 3, which improperly defines "the Commission" as including each of the SEC's over 4,500 employees. Subject to and without waiving its objections, the Commission denies this Request and avers that (1) in reviewing Coinbase Global, Inc.'s registration statement on Form S-1, Division of Corporation Finance staff did not determine whether the Coinbase Platform intermediated transactions involving investment contracts; and (2) the Investigation that preceded this Action commenced on June 30, 2021.

Request for Admission No. 24

Admit that, before and as of April 1, 2021, the date of effectiveness of Coinbase Global, Inc.'s S-1, MATIC was available to Coinbase's customers to buy, sell, or trade on Coinbase's Platform.

Answer: Admits.

Request for Admission No. 25

Admit that the SEC knew, when it declared effective Coinbase Global, Inc.'s S-1, that MATIC was available to Coinbase's customers to buy, sell, or trade on Coinbase's Platform.

Answer: The Commission objects to Request No. 25 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further reiterates its Objection to Coinbase's Definition and Instruction No. 3, which improperly defines "the Commission" as including each of the SEC's over 4,500 employees. Subject to and without waiving its objections, the Commission denies this Request

and avers that (1) in reviewing Coinbase Global, Inc.'s registration statement on Form S-1, Division of Corporation Finance staff did not determine whether the Coinbase Platform intermediated transactions involving investment contracts; and (2) the Investigation that preceded this Action commenced on June 30, 2021.

Request for Admission No. 26

Admit that, before and as of April 1, 2021, the date of effectiveness of Coinbase Global, Inc.'s S-1, FIL was available to Coinbase's customers to buy, sell, or trade on Coinbase's Platform.

Answer: Admits.

Request for Admission No. 27

Admit that the SEC knew, when it declared effective Coinbase Global, Inc.'s S-1, that FIL was available to Coinbase's customers to buy, sell, or trade on Coinbase's Platform.

Answer: The Commission objects to Request No. 27 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further reiterates its Objection to Coinbase's Definition and Instruction No. 3, which improperly defines "the Commission" as including each of the SEC's over 4,500 employees. Subject to and without waiving its objections, the Commission admits that in or around July 2020 Coinbase delivered a presentation to the Division of Corporation Finance staff stating that it "plans to list Filecoin in August 2020," which Coinbase stated was a "4" on a scale of "5" for "high securities law risk." However, the Commission avers that (1) in reviewing Coinbase Global, Inc.'s registration statement on Form S-1, Division of Corporation Finance staff did not determine whether the Coinbase Platform intermediated transactions involving investment contracts; and (2) the Investigation that preceded this Action commenced on June 30, 2021. Otherwise, denies.

Request for Admission No. 28

Admit that, before and as of April 1, 2021, the date of effectiveness of Coinbase Global, Inc.'s S-1, DASH was available to Coinbase's customers to buy, sell, or trade on Coinbase's Platform.

Answer: Admits.

Request for Admission No. 29

Admit that the SEC knew, when it declared effective Coinbase Global, Inc.'s S-1, that DASH was available to Coinbase's customers to buy, sell, or trade on Coinbase's Platform.

Answer: The Commission objects to Request No. 29 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further reiterates its Objection to Coinbase's Definition and Instruction No. 3, which improperly defines "the Commission" as including each of the SEC's over 4,500 employees. Subject to and without waiving its objections, the Commission denies this Request

and avers that (1) in reviewing Coinbase Global, Inc.'s registration statement on Form S-1, Division of Corporation Finance staff did not determine whether the Coinbase Platform intermediated transactions involving investment contracts; and (2) the Investigation that preceded this Action commenced on June 30, 2021.

Request for Admission No. 30

Admit that, before and as of April 1, 2021, the date of effectiveness of Coinbase Global, Inc.'s S-1, ETH was available to Coinbase's customers to buy, sell, or trade on Coinbase's Platform.

Answer: The Commission objects to Request No. 30 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. Subject to and without waiving its objections, the Commission admits this Request.

Request for Admission No. 31

Admit that the SEC knew, when it declared effective Coinbase Global, Inc.'s S-1, that ETH was available to Coinbase's customers to buy, sell, or trade on Coinbase's Platform.

Answer: The Commission objects to Request No. 31 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further reiterates its Objection to Coinbase's Definition and Instruction No. 3, which improperly defines "the Commission" as including each of the SEC's over 4,500 employees. Subject to and without waiving its objections, the Commission admits that Coinbase Global, Inc.'s registration statement on Form S-1 states that "A majority of our net revenue is derived from transactions in … Ethereum." However, the Commission avers that (1) in reviewing Coinbase Global, Inc.'s registration statement on Form S-1, Division of Corporation Finance staff did not determine whether the Coinbase Platform intermediated transactions involving investment contracts; and (2) the Investigation that preceded this Action commenced on June 30, 2021. Otherwise, denies.

Request for Admission No. 32

Admit that, before and as of April 1, 2021, the date of effectiveness of Coinbase Global, Inc.'s S-1, XTZ was available to Coinbase's customers to buy, sell, or trade on Coinbase's Platform.

Answer: Admits.

Request for Admission No. 33

Admit that the SEC knew, when it declared effective Coinbase Global, Inc.'s S-1, that XTZ was available to Coinbase's customers to buy, sell, or trade on Coinbase's Platform.

Answer: The Commission objects to Request No. 33 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and

other equitable defenses. The Commission further reiterates its Objection to Coinbase's Definition and Instruction No. 3, which improperly defines "the Commission" as including each of the SEC's over 4,500 employees. Subject to and without waiving its objections, the Commission denies this Request and avers that (1) in reviewing Coinbase Global, Inc.'s registration statement on Form S-1, Division of Corporation Finance staff did not determine whether the Coinbase Platform intermediated transactions involving investment contracts; and (2) the Investigation that preceded this Action commenced on June 30, 2021.

Request for Admission No. 34

Admit that, before and as of April 1, 2021, the date of effectiveness of Coinbase Global, Inc.'s S-1, ATOM was available to Coinbase's customers to buy, sell, or trade on Coinbase's Platform.

Answer: Admit.

Request for Admission No. 35

Admit that the SEC knew, when it declared effective Coinbase Global, Inc.'s S-1, that ATOM was available to Coinbase's customers to buy, sell, or trade on Coinbase's Platform.

Answer: The Commission objects to Request No. 35 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further reiterates its Objection to Coinbase's Definition and Instruction No. 3, which improperly defines "the Commission" as including each of the SEC's over 4,500 employees. Subject to and without waiving its objections, the Commission denies this Request and avers that (1) in reviewing Coinbase Global, Inc.'s registration statement on Form S-1, Division of Corporation Finance staff did not determine whether the Coinbase Platform intermediated transactions involving investment contracts; and (2) the Investigation that preceded this Action commenced on June 30, 2021.

Request for Admission No. 36

Admit that, prior to April 1, 2021, Coinbase's Staking Services were available for XTZ.

Answer: Admits.

Request for Admission No. 37

Admit that the SEC knew that, before and as of April 1, 2021, the date of effectiveness of Coinbase Global, Inc.'s S-1, Coinbase's Staking Services were available for XTZ.

Answer: The Commission objects to Request No. 37 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further reiterates its Objection to Coinbase's Definition and Instruction No. 3, which improperly defines "the Commission" as including each of the SEC's over 4,500 employees. Subject to and without waiving its objections, the Commission admits that Coinbase

provided information to Division of Corporation Finance staff regarding its "Tezos Staking Model" before April 1, 2021, but avers that (1) in reviewing Coinbase Global, Inc.'s registration statement on Form S-1, Division of Corporation Finance staff did not determine whether Coinbase offered and sold its Staking Services Program as an investment contract; and (2) the Investigation that preceded this Action commenced on June 30, 2021. Otherwise, denies.

Request for Admission No. 38

Admit that, prior to April 1, 2021, Coinbase's Staking Services were available for ATOM.

Answer: Admits.

Request for Admission No. 39

Admit that the SEC knew that, before and as of April 1, 2021, the date of effectiveness of Coinbase Global, Inc.'s S-1, Coinbase's Staking Services were available for ATOM.

Answer: The Commission objects to Request No. 39 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further reiterates its Objection to Coinbase's Definition and Instruction No. 3, which improperly defines "the Commission" as including each of the SEC's over 4,500 employees. Subject to and without waiving its objections, the Commission denies this Request and avers that (1) in reviewing Coinbase Global, Inc.'s registration statement on Form S-1, Division of Corporation Finance staff did not determine whether Coinbase offered and sold its Staking Services Program as an investment contract; and (2) the Investigation that preceded this Action commenced on June 30, 2021.

Request for Admission No. 40

Admit that, prior to April 1, 2021, Coinbase informed the SEC that it would offer its staking service for ETH.

Answer: The Commission objects to Request No. 40 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. Subject to and without waiving its objections, the Commission asserts that it lacks knowledge or information sufficient to admit or deny this Request, and after reasonable inquiry the information the Commission knows or can readily obtain is insufficient to enable it to admit or deny this request. To the extent a response is required, then subject to and without waiving its objections, the Commission denies this Request.

Request for Admission No. 41

Admit that on July 21, 2022, the SEC filed the *Wahi* Complaint.

Answer: Admits.

Request for Admission No. 42

Admit that the SEC alleged in *Wahi* that Ihsan Wahi, Nikhil Wahi, and Sameer Ramani violated Section 10(b) [15 U.S.C. § 78j(b)] of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder [17 C.F.R.§ 240.10b-5].

Answer: The Commission objects to Request No. 42 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. Subject to and without waiving its objections, the Commission admits this Request.

Request for Admission No. 43

Admit that the SEC alleged in *Wahi* that Ihsan Wahi and Nikhil Wahi purchased and sold investment contracts, and thus securities subject to the federal securities laws, including the AMP, RLY, DDX, XYO, RGT, LCX, and POWR tokens.

Answer: Admits.

Request for Admission No. 44

Admit that the SEC alleged in *Wahi* that the AMP, RLY, DDX, XYO, RGT, LCX, and POWR tokens were made available to Coinbase's customers to buy, sell, or trade on Coinbase's Platform.

Answer: Admits.

Request for Admission No. 45

Admit that on April 17, 2023, the SEC filed the *Bittrex* Complaint.

Answer: Admits.

Request for Admission No. 46

Admit that the SEC alleged in *Bittrex* that Bittrex, Inc. operated an unregistered securities exchange on which Bittrex's customers could buy, sell, and trade investment contracts.

Answer: Admits.

Request for Admission No. 47

Admit that, prior to April 17, 2023, the AMP token was available for trading on the Bittrex Platform.

Answer: The Commission objects to Request No. 47 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. Subject to and without waiving its objections, the Commission admits that on

or about August 31, 2021, the Bittrex Global Team announced in a Medium blog post that "The USD-AMP market pair is now available on: https://global.bittrex.com/home/markets." Otherwise, denies.

Request for Admission No. 48

Admit that, prior to April 17, 2023, the RLY token was available for trading on the Bittrex Platform.

Answer: The Commission objects to Request No. 48 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. Subject to and without waiving its objections, the Commission admits that on or about June 29, 2022, Bittrex announced in an X (formerly known as Twitter) post "New Listing Update: Rally (RLY) wallet is open and trading will begin shortly on bittrex.com." Otherwise, denies.

Request for Admission No. 49

Admit that, prior to April 17, 2023, the DDX token was available for trading on the Bittrex Platform.

Answer: The Commission objects to Request No. 49 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. Subject to and without waiving its objections, the Commission asserts that it cannot admit or deny this Request after reasonable inquiry because the Commission does not have access to this information. To the extent a response is required, then subject to and without waiving its objections, the Commission denies this Request.

Request for Admission No. 50

Admit that, prior to April 17, 2023, the XYO token was available for trading on the Bittrex Platform.

Answer: The Commission objects to Request No. 50 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. Subject to and without waiving its objections, the Commission admits that on or about May 2, 2022, Bittrex announced in an X (formerly known as Twitter) post "New Listing Update: XYO (XYO) wallet is open and trading will begin shortly on bittrex.com." Otherwise, denies.

Request for Admission No. 51

Admit that, prior to April 17, 2023, the RGT token was available for trading on the Bittrex Platform.

Answer: The Commission objects to Request No. 51 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and

other equitable defenses. Subject to and without waiving its objections, the Commission admits that on or about April 21, 2021, the Bittrex Global Team announced in a Medium blog post "Announcing Rari Governance Token (RGT) on Bittrex Global!" Otherwise, denies.

Request for Admission No. 52

Admit that, prior to April 17, 2023, the LCX token was available for trading on the Bittrex Platform.

Answer: The Commission objects to Request No. 52 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. Subject to and without waiving its objections, the Commission asserts that it cannot admit or deny this Request after reasonable inquiry because the Commission does not have access to this information. To the extent a response is required, then subject to and without waiting its objections, the Commission denies this Request.

Request for Admission No. 53

Admit that, prior to April 17, 2023, the POWR token was available for trading on the Bittrex Platform.

Answer: The Commission objects to Request No. 53 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. Subject to and without waiving its objections, the Commission admits that on or about February 10, 2020, Bittrex Global announced in an X (formerly known as Twitter) post "We are pleased to announce POWR token by Power Ledger is listed on Bittrex Global." Otherwise, denies.

Request for Admission No. 54

Admit that, in the *Bittrex* Complaint, the SEC did not allege that AMP tokens were purchased, sold, or traded as investment contracts on the Bittrex Platform.

Answer: The Commission objects to Request No. 54 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. Subject to and without waiving its objections, the Commission admits that the *Bittrex* Complaint does not specifically reference the AMP token. The Commission avers that the *Bittrex* Complaint alleged that "the Bittrex Platform has made available for trading crypto assets that were offered and sold as investment contracts, and thus securities" (*Bittrex* Complaint ¶ 110), and further provided "a non-exhaustive list of six examples of crypto asset securities available for trading on the Bittrex Platform" (*id.* ¶ 141). Otherwise, denies.

Request for Admission No. 55

Admit that, in the *Bittrex* Complaint, the SEC did not allege that RLY tokens were purchased, sold, or traded as investment contracts on the Bittrex Platform.

Answer: The Commission objects to Request No. 55 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. Subject to and without waiving its objections, the Commission admits that the *Bittrex* Complaint does not specifically reference the RLY token. The Commission avers that the *Bittrex* Complaint alleged that "the Bittrex Platform has made available for trading crypto assets that were offered and sold as investment contracts, and thus securities" (*Bittrex* Complaint ¶ 110), and further provided "a non-exhaustive list of six examples of crypto asset securities available for trading on the Bittrex Platform" (*id.* ¶ 141). Otherwise, denies.

Request for Admission No. 56

Admit that, in the *Bittrex* Complaint, the SEC did not allege that DDX tokens were purchased, sold, or traded as investment contracts on the Bittrex Platform.

Answer: The Commission objects to Request No. 56 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. Subject to and without waiving its objections, the Commission admits that the *Bittrex* Complaint does not specifically reference the DDX token. The Commission avers that the *Bittrex* Complaint alleged that "the Bittrex Platform has made available for trading crypto assets that were offered and sold as investment contracts, and thus securities" (*Bittrex* Complaint ¶ 110), and further provided "a non-exhaustive list of six examples of crypto asset securities available for trading on the Bittrex Platform" (*id.* ¶ 141). Otherwise, denies.

Request for Admission No. 57

Admit that, in the *Bittrex* Complaint, the SEC did not allege that XYO tokens were purchased, sold, or traded as investment contracts on the Bittrex Platform.

Answer: The Commission objects to Request No. 57 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. Subject to and without waiving its objections, the Commission admits that the *Bittrex* Complaint does not specifically reference the XYO token. The Commission avers that the *Bittrex* Complaint alleged that "the Bittrex Platform has made available for trading crypto assets that were offered and sold as investment contracts, and thus securities" (*Bittrex* Complaint ¶ 110), and further provided "a non-exhaustive list of six examples of crypto asset securities available for trading on the Bittrex Platform" (*id.* ¶ 141). Otherwise, denies.

Request for Admission No. 58

Admit that, in the *Bittrex* Complaint, the SEC did not allege that RGT tokens were purchased, sold, or traded as investment contracts on the Bittrex Platform.

Answer: The Commission objects to Request No. 57 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a

defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. Subject to and without waiving its objections, the Commission admits that the *Bittrex* Complaint does not specifically reference the RGT token. The Commission avers that the *Bittrex* Complaint alleged that "the Bittrex Platform has made available for trading crypto assets that were offered and sold as investment contracts, and thus securities" (*Bittrex* Complaint ¶ 110), and further provided "a non-exhaustive list of six examples of crypto asset securities available for trading on the Bittrex Platform" (*id.* ¶ 141). Otherwise, denies.

Request for Admission No. 59

Admit that, in the *Bittrex* Complaint, the SEC did not allege that LCX tokens were purchased, sold, or traded as investment contracts on the Bittrex Platform.

Answer: The Commission objects to Request No. 59 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. Subject to and without waiving its objections, the Commission admits that the *Bittrex* Complaint does not specifically reference the LCX token. The Commission avers that the *Bittrex* Complaint alleged that "the Bittrex Platform has made available for trading crypto assets that were offered and sold as investment contracts, and thus securities" (*Bittrex* Complaint ¶ 110), and further provided "a non-exhaustive list of six examples of crypto assets securities available for trading on the Bittrex Platform" (*id.* ¶ 141). Otherwise, denies.

Request for Admission No. 60

Admit that, in the *Bittrex* Complaint, the SEC did not allege that POWR tokens were purchased, sold, or traded as investment contracts on the Bittrex Platform.

Answer: The Commission objects to Request No. 60 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. Subject to and without waiving its objections, the Commission denies this Request. The Commission avers that the *Bittrex* Complaint alleged that "the Bittrex Platform has made available for trading crypto assets that were offered and sold as investment contracts, and thus securities" (*Bittrex* Complaint ¶ 110), and further provided "a non-exhaustive list of six examples of crypto asset securities available for trading on the Bittrex Platform" (*id.* ¶ 141), and, additionally, did allege that "in deciding to make the crypto asset security known as 'POWR' … available on the Bittrex Platform, Bittrex ignored clear indications that POWR was marketed, offered, and sold as a security" (*id.* ¶ 134).

Request for Admission No. 61

Admit that on June 5, 2023, the SEC filed the *Binance* Complaint.

Answer: Admits.

Request for Admission No. 62

Admit that the SEC alleges in *Binance* that the Binance Platforms operate as unregistered securities exchanges on which persons can buy, sell, and trade investment contracts.

Answer: Admits.

Request for Admission No. 63

Admit that, prior to June 5, 2023, the AMP token was available for trading on the Binance Platforms.

Answer: The Commission objects to Request No. 63 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. Subject to and without waiving its objections, the Commission admits this Request.

Request for Admission No. 64

Admit that the SEC knew, prior to June 5, 2023, that the AMP token was available for trading on the Binance Platforms.

Answer: The Commission objects to Request No. 64 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further reiterates its Objection to Coinbase's Definition and Instruction No. 3, which improperly defines "the Commission" as including each of the SEC's over 4,500 employees. Subject to and without waiving its objections, the Commission admits that certain Commission staff assigned to the investigation into the Binance Platforms was informed prior to June 5, 2023, that the AMP token was available for trading on the Binance Platforms. Otherwise, denies.

Request for Admission No. 65

Admit that, in the *Binance* Complaint, the SEC did not allege that the AMP token was purchased, sold, or traded as an investment contract on the Binance Platforms.

Answer: The Commission objects to Request No. 65 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. Subject to and without waiving its objections, the Commission denies this Request. The Commission avers that the *Binance* Complaint alleged that "the Binance Platforms … have made available for trading on them crypto assets that are offered and sold as investment contracts, and thus as securities," (*Binance* Complaint ¶ 352) and further provided "a non-exhaustive list of ten Crypto Asset Securities … available on the Binance Platforms" (*id.* ¶ 361), and, additionally, did alleged that the "Binance Platforms have made available for trading crypto assets that have been the subject of prior SEC enforcement actions based upon their status as crypto asset securities, including but not limited to AMP" (*id.* ¶ 360).

Request for Admission No. 66

Admit that, in the *Binance* Complaint, the SEC alleges that the MANA, ALGO, ATOM, and COTI tokens were purchased, sold, or traded as investment contracts on the Binance Platforms.

Answer: The Commission objects to Request No. 66 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. Subject to and without waiving its objections, the Commission admits this Request.

Request for Admission No. 67

Admit that the Complaint does not include the AMP, RLY, DDX, XYO, RGT, LCX, and POWR tokens in its definition of Crypto Asset Securities.

Answer: The Commission objects to Request No. 67 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the Request as vague and ambiguous because it is unclear what the undefined term "definition" means in the context of this request. Subject to and without waiving its objections, the Commission admits that the Complaint does not specifically reference the RGT token, but otherwise, denies the remainder of this Request. The Commission avers that the Complaint alleged that "Coinbase … has made available for trading crypto assets that are offered and sold as investment contracts, and thus securities" (Complaint ¶ 102) and further provided "additional details regarding a non-exhaustive list of 13 Crypto Asset Securities" (*id.* ¶ 125), and, additionally, did allege that "Coinbase has made available for trading on Coinbase Platform … crypto assets that have been the subject of prior SEC enforcement actions based upon their status as crypto asset securities" including "AMP, … DDX, … LCX, … POWR, … RLY, … and XYO" (*id.* ¶ 124).

Request for Admission No. 68

Admit that the Complaint does not include the MANA, ALGO, ATOM, and COTI tokens in its definition of Crypto Asset Securities.

Answer: The Commission objects to Request No. 68 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the Request as vague and ambiguous because it is unclear what the undefined term "definition" means in the context of this request. Subject to and without waiving its objections, the Commission admits that the Complaint does not specifically reference the MANA, ALGO, ATOM, and COTI tokens. The Commission avers that the Complaint alleged that "Coinbase … has made available for trading crypto assets that are offered and sold as investment contracts, and thus securities" (Complaint ¶ 102) and further provided "additional details regarding a non-exhaustive list of 13 Crypto Asset Securities" (*id.* ¶ 125). Otherwise, denies.

Request for Admission No. 69

Admit that, prior to June 6, 2023, Coinbase's customers could buy, sell, or trade the MANA, ALGO, ATOM, and COTI tokens on Coinbase's Platform.

Answer: The Commission objects to Request No. 69 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. Subject to and without waiving its objections, the Commission admits following: that on or about November 5, 2020, Coinbase announced on its blog that "Decentraland (MANA) … [is] now available on Coinbase … customers can now buy, sell, convert, send, receive, or store … MANA"; that on or about July 16, 2020, Coinbase announced on its blog that "Algorand (ALGO) is now available on Coinbase … customers can now buy, sell, convert, send, receive, or store ALGO"; that on or about January 16, 2020, Coinbase announced on its blog that "Cosmos (ATOM) is now available on Coinbase … customers can now buy, sell, convert, send, receive, or store ATOM"; and that on or about August 27, 2021, Coinbase announced on its blog that "COTI (COTI) is now available on Coinbase … customers can now buy, sell, convert, send, receive, or store COTI." Otherwise, denies.

Request for Admission No. 70

Admit that, prior to April 17, 2023, the SOL token was available for trading on the Bittrex Platform.

Answer: The Commission objects to Request No. 70 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to this Request as overbroad, unduly burdensome, and not proportional to the needs of the case. Subject to and without waiving its objections, the Commission admits that on or about August 5, 2022, Bittrex announced in an X (formerly known as Twitter) post "Solana (SOL) wallet is now open and trading will begin shortly on bittrex.com." Otherwise, denies.

Request for Admission No. 71

Admit that the SEC knew, prior to April 17, 2023, that the SOL token was available for trading on the Bittrex Platform.

Answer: The Commission objects to Request No. 71 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission also objects to this Request as overbroad, unduly burdensome, and not proportional to the needs of the case. The Commission further reiterates its Objection to Coinbase's Definition and Instruction No. 3, which improperly defines "the Commission" as including each of the SEC's over 4,500 employees. Subject to and without waiving its objections, the Commission admits that certain Commission staff assigned to the investigation into the Bittrex Platform was informed prior to April 17, 2023 that the SOL token was available for trading on the Bittrex Platform. Otherwise, denies.

Request for Admission No. 72

Admit that the SEC does not allege in the *Bittrex* Complaint that SOL tokens were purchased, sold, or traded as investment contracts on the Bittrex Platform.

Answer: The Commission objects to Request No. 72 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. Subject to and without waiving its objections, the Commission admits that the *Bittrex* Complaint does not specifically reference the SOL token. The Commission avers that the *Bittrex* Complaint alleged that "the Bittrex Platform has made available for trading crypto assets that were offered and sold as investment contracts, and thus securities" (*Bittrex* Complaint ¶ 110), and further provided "a non-exhaustive list of six examples of crypto asset securities available for trading on the Bittrex Platform" (*id.* ¶ 141). Otherwise, denies.

Request for Admission No. 73

Admit that, prior to April 17, 2023, the ADA token was available for trading on the Bittrex Platform.

Answer: The Commission objects to Request No. 70 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to this Request as overbroad, unduly burdensome, and not proportional to the needs of the case. Subject to and without waiving its objections, the Commission admits that on or about October 1, 2017, Cardano Foundation announced in an X (formerly known as Twitter) post "Ada trading is now live on Bittrex!" Otherwise, denies.

Request for Admission No. 74

Admit that the SEC knew, prior to April 17, 2023, that the ADA token was available for trading on the Bittrex Platform.

Answer: The Commission objects to Request No. 74 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission also objects to this Request as overbroad, unduly burdensome, and not proportional to the needs of the case. The Commission further reiterates its Objection to Coinbase's Definition and Instruction No. 3, which improperly defines "the Commission" as including each of the SEC's over 4,500 employees. Subject to and without waiving its objections, the Commission admits that certain Commission staff assigned to the investigation into the Bittrex Platform was informed prior to April 17, 2023 that the ADA token was available for trading on the Bittrex Platform. Otherwise, denies.

Request for Admission No. 75

Admit that the SEC does not allege in the *Bittrex* Complaint that ADA tokens were purchased, sold, or traded as investment contracts on the Bittrex Platform.

Answer: The Commission objects to Request No. 75 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. Subject to and without waiving its objections, the Commission admits that the *Bittrex* Complaint does not specifically reference the ADA token. The Commission avers that the *Bittrex* Complaint alleged that "the Bittrex Platform has made available for trading crypto assets that were offered and sold as investment contracts, and thus securities" (*Bittrex* Complaint ¶ 110), and further provided "a non-exhaustive list of six examples of crypto asset securities available for trading on the Bittrex Platform" (*id.* ¶ 141). Otherwise, denies.

Request for Admission No. 76

Admit that, prior to April 17, 2023, the MATIC token was available for trading on the Bittrex Platform.

Answer: The Commission objects to Request No. 76 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to this Request as overbroad, unduly burdensome, and not proportional to the needs of the case. Subject to and without waiving its objections, the Commission admits that on or about May 5, 2021, Bittrex announced in an X (formerly known as Twitter) post "Polygon (MATIC) wallet is now open and trading will begin shortly on bittrex.com." Otherwise, denies.

Request for Admission No. 77

Admit that the SEC knew, prior to April 17, 2023, that the MATIC token was available for trading on the Bittrex Platform.

Answer: The Commission objects to Request No. 77 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission also objects to this Request as overbroad, unduly burdensome, and not proportional to the needs of the case. The Commission further reiterates its Objection to Coinbase's Definition and Instruction No. 3, which improperly defines "the Commission" as including each of the SEC's over 4,500 employees. Subject to and without waiving its objections, the Commission admits that certain Commission staff assigned to the investigation into the Bittrex Platform was informed prior to April 17, 2023 that the MATIC token was available for trading on the Bittrex Platform. Otherwise, denies.

Request for Admission No. 78

Admit that the SEC does not allege in the *Bittrex* Complaint that MATIC tokens were purchased, sold, or traded as investment contracts on the Bittrex Platform.

Answer: The Commission objects to Request No. 78 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a

defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. Subject to and without waiving its objections, the Commission admits that the *Bittrex* Complaint does not specifically reference the MATIC token. The Commission avers that the *Bittrex* Complaint alleged that "the Bittrex Platform has made available for trading crypto assets that were offered and sold as investment contracts, and thus securities" (*Bittrex* Complaint ¶ 110), and further provided "a non-exhaustive list of six examples of crypto asset securities available for trading on the Bittrex Platform" (*id.* ¶ 141). Otherwise, denies.

Request for Admission No. 79

Admit that, prior to April 17, 2023, the FIL token was available for trading on the Bittrex Platform.

Answer: The Commission objects to Request No. 79 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to this Request as overbroad, unduly burdensome, and not proportional to the needs of the case. Subject to and without waiving its objections, the Commission admits that on or about March 9, 2021, Bittrex announced in an X (formerly known as Twitter) post "Filecoin (FIL) wallet is now open and trading will begin shortly on bittrex.com." Otherwise, denies.

Request for Admission No. 80

Admit that the SEC knew, prior to April 17, 2023, that the FIL token was available for trading on the Bittrex Platform.

Answer: The Commission objects to Request No. 80 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission also objects to this Request as overbroad, unduly burdensome, and not proportional to the needs of the case. The Commission further reiterates its Objection to Coinbase's Definition and Instruction No. 3, which improperly defines "the Commission" as including each of the SEC's over 4,500 employees. Subject to and without waiving its objections, the Commission admits that certain Commission staff assigned to the investigation into the Bittrex Platform was informed prior to April 17, 2023 that the FIL token was available for trading on the Bittrex Platform. Otherwise, denies.

Request for Admission No. 81

Admit that the SEC does not allege in the *Bittrex* Complaint that FIL tokens were purchased, sold, or traded as investment contracts on the Bittrex Platform.

Answer: The Commission objects to Request No. 81 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. Subject to and without waiving its objections, the Commission admits that the *Bittrex* Complaint does not specifically reference the FIL token. The Commission avers that the *Bittrex*

Complaint alleged that "the Bittrex Platform has made available for trading crypto assets that were offered and sold as investment contracts, and thus securities" (*Bittrex* Complaint ¶ 110), and further provided "a non-exhaustive list of six examples of crypto asset securities available for trading on the Bittrex Platform" (*id.* ¶ 141). Otherwise, denies.

Request for Admission No. 82

Admit that, prior to April 17, 2023, the SAND token was available for trading on the Bittrex Platform.

Answer: The Commission objects to Request No. 82 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to this Request as overbroad, unduly burdensome, and not proportional to the needs of the case. Subject to and without waiving its objections, the Commission admits that on or about December 14, 2021, Bittrex announced in an X (formerly known as Twitter) post "Sandbox (SAND) wallet is now open and trading will begin shortly on bittrex.com." Otherwise, denies.

Request for Admission No. 83

Admit that the SEC knew, prior to April 17, 2023, that the SAND token was available for trading on the Bittrex Platform.

Answer: The Commission objects to Request No. 83 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission also objects to this Request as overbroad, unduly burdensome, and not proportional to the needs of the case. The Commission further reiterates its Objection to Coinbase's Definition and Instruction No. 3, which improperly defines "the Commission" as including each of the SEC's over 4,500 employees. Subject to and without waiving its objections, the Commission admits that certain Commission staff assigned to the investigation into the Bittrex Platform was informed prior to April 17, 2023 that the SAND token was available for trading on the Bittrex Platform. Otherwise, denies.

Request for Admission No. 84

Admit that the SEC does not allege in the *Bittrex* Complaint that SAND tokens were purchased, sold, or traded as investment contracts on the Bittrex Platform.

Answer: The Commission objects to Request No. 84 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. Subject to and without waiving its objections, the Commission admits that the *Bittrex* Complaint does not specifically reference the SAND token. The Commission avers that the *Bittrex* Complaint alleged that "the Bittrex Platform has made available for trading crypto assets that were offered and sold as investment contracts, and thus securities" (*Bittrex* Complaint ¶ 110), and further provided "a non-exhaustive list of six examples of crypto asset securities available for trading on

the Bittrex Platform" (*id.* ¶ 141). Otherwise, denies.

Request for Admission No. 85

Admit that, prior to April 17, 2023, the AXS token was available for trading on the Bittrex Platform.

Answer: The Commission objects to Request No. 85 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to this Request as overbroad, unduly burdensome, and not proportional to the needs of the case. Subject to and without waiving its objections, the Commission admits that on or about June 15, 2022, Bittrex announced in an X (formerly known as Twitter) post "Axie Infinity Shards (AXS) wallet is now open and trading will begin shortly on bittrex.com." Otherwise, denies.

Request for Admission No. 86

Admit that the SEC knew, prior to April 17, 2023, that the AXS token was available for trading on the Bittrex Platform.

Answer: The Commission objects to Request No. 86 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission also objects to this Request as overbroad, unduly burdensome, and not proportional to the needs of the case. The Commission further reiterates its Objection to Coinbase's Definition and Instruction No. 3, which improperly defines "the Commission" as including each of the SEC's over 4,500 employees. Subject to and without waiving its objections, the Commission admits that certain Commission staff assigned to the investigation into the Bittrex Platform was informed prior to April 17, 2023 that the AXS token was available for trading on the Bittrex Platform. Otherwise, denies.

Request for Admission No. 87

Admit that the SEC does not allege in the *Bittrex* Complaint that AXS tokens were purchased, sold, or traded as investment contracts on the Bittrex Platform.

Answer: The Commission objects to Request No. 87 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. Subject to and without waiving its objections, the Commission admits that the *Bittrex* Complaint does not specifically reference the AXS token. The Commission avers that the *Bittrex* Complaint alleged that "the Bittrex Platform has made available for trading crypto assets that were offered and sold as investment contracts, and thus securities" (*Bittrex* Complaint ¶ 110), and further provided "a non-exhaustive list of six examples of crypto asset securities available for trading on the Bittrex Platform" (*id.* ¶ 141). Otherwise, denies.

Request for Admission No. 88

Admit that, prior to April 17, 2023, the VGX token was available for trading on the Bittrex Platform.

Answer: The Commission objects to Request No. 88 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to this Request as overbroad, unduly burdensome, and not proportional to the needs of the case. Subject to and without waiving its objections, the Commission asserts that it cannot admit or deny this Request after reasonable inquiry because the Commission does not have access to this information. To the extent a response is required, then subject to and without waiting its objections, the Commission denies this Request.

Request for Admission No. 89

Admit that the SEC knew, prior to April 17, 2023, that the VGX token was available for trading on the Bittrex Platform.

Answer: The Commission objects to Request No. 89 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission also objects to this Request as overbroad, unduly burdensome, and not proportional to the needs of the case. The Commission further reiterates its Objection to Coinbase's Definition and Instruction No. 3, which improperly defines "the Commission" as including each of the SEC's over 4,500 employees. Subject to and without waiving its objections, the Commission admits that certain Commission staff assigned to the investigation into the Bittrex Platform was informed prior to April 17, 2023 that the VGX token was available for trading on the Bittrex Platform. Otherwise, denies.

Request for Admission No. 90

Admit that the SEC does not allege in the *Bittrex* Complaint that VGX tokens were purchased, sold, or traded as investment contracts on the Bittrex Platform.

Answer: The Commission objects to Request No. 90 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. Subject to and without waiving its objections, the Commission admits that the *Bittrex* Complaint does not specifically reference the VGX token. The Commission avers that the *Bittrex* Complaint alleged that "the Bittrex Platform has made available for trading crypto assets that were offered and sold as investment contracts, and thus securities" (*Bittrex* Complaint ¶ 110), and further provided "a non-exhaustive list of six examples of crypto asset securities available for trading on the Bittrex Platform" (*id.* ¶ 141). Otherwise, denies.

Request for Admission No. 91

Admit that, prior to April 17, 2023, the CHZ token was available for trading on the Bittrex

Platform.

Answer: The Commission objects to Request No. 91 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to this Request as overbroad, unduly burdensome, and not proportional to the needs of the case. Subject to and without waiving its objections, the Commission asserts that it cannot admit or deny this Request after reasonable inquiry because the Commission does not have access to this information. To the extent a response is required, then subject to and without waiting its objections, the Commission denies this Request.

Request for Admission No. 92

Admit that the SEC knew, prior to April 17, 2023, that the CHZ token was available for trading on the Bittrex Platform.

Answer: The Commission objects to Request No. 92 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission also objects to this Request as overbroad, unduly burdensome, and not proportional to the needs of the case. The Commission further reiterates its Objection to Coinbase's Definition and Instruction No. 3, which improperly defines "the Commission" as including each of the SEC's over 4,500 employees. Subject to and without waiving its objections, the Commission admits that certain Commission staff assigned to the investigation into the Bittrex Platform was informed prior to April 17, 2023 that the CHZ token was available for trading on the Bittrex Platform. Otherwise, denies.

Request for Admission No. 93

Admit that the SEC does not allege in the *Bittrex* Complaint that CHZ tokens were purchased, sold, or traded as investment contracts on the Bittrex Platform.

Answer: The Commission objects to Request No. 93 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. Subject to and without waiving its objections, the Commission admits that the *Bittrex* Complaint does not specifically reference the CHZ token. The Commission avers that the *Bittrex* Complaint alleged that "the Bittrex Platform has made available for trading crypto assets that were offered and sold as investment contracts, and thus securities" (*Bittrex* Complaint ¶ 110), and further provided "a non-exhaustive list of six examples of crypto asset securities available for trading on the Bittrex Platform" (*id.* ¶ 141). Otherwise, denies.

Request for Admission No. 94

Admit that, prior to April 17, 2023, the FLOW token was available for trading on the Bittrex Platform.

Answer: The Commission objects to Request No. 94 because it is not relevant to any parties'

claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to this Request as overbroad, unduly burdensome, and not proportional to the needs of the case. Subject to and without waiving its objections, the Commission asserts that it cannot admit or deny this Request after reasonable inquiry because the Commission does not have access to this information. To the extent a response is required, then subject to and without waiting its objections, the Commission denies this Request.

Request for Admission No. 95

Admit that the SEC knew, prior to April 17, 2023, that the FLOW token was available for trading on the Bittrex Platform.

Answer: The Commission objects to Request No. 95 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission also objects to this Request as overbroad, unduly burdensome, and not proportional to the needs of the case. The Commission further reiterates its Objection to Coinbase's Definition and Instruction No. 3, which improperly defines "the Commission" as including each of the SEC's over 4,500 employees. Subject to and without waiving its objections, the Commission admits that certain Commission staff assigned to the investigation into the Bittrex Platform was informed prior to April 17, 2023 that the FLOW token was available for trading on the Bittrex Platform. Otherwise, denies.

Request for Admission No. 96

Admit that the SEC does not allege in the *Bittrex* Complaint that FLOW tokens were purchased, sold, or traded as investment contracts on the Bittrex Platform.

Answer: The Commission objects to Request No. 96 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. Subject to and without waiving its objections, the Commission admits that the *Bittrex* Complaint does not specifically reference the FLOW token. The Commission avers that the *Bittrex* Complaint alleged that "the Bittrex Platform has made available for trading crypto assets that were offered and sold as investment contracts, and thus securities" (*Bittrex* Complaint ¶ 110), and further provided "a non-exhaustive list of six examples of crypto asset securities available for trading on the Bittrex Platform" (*id.* ¶ 141). Otherwise, denies.

Request for Admission No. 97

Admit that, prior to April 17, 2023, the ICP token was available for trading on the Bittrex Platform.

Answer: The Commission objects to Request No. 94 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to this Request as overbroad, unduly

burdensome, and not proportional to the needs of the case. Subject to and without waiving its objections, the Commission asserts that it cannot admit or deny this Request after reasonable inquiry because the Commission does not have access to this information. To the extent a response is required, then subject to and without waiting its objections, the Commission denies this Request.

Request for Admission No. 98

Admit that the SEC knew, prior to April 17, 2023, that the ICP token was available for trading on the Bittrex Platform.

Answer: The Commission objects to Request No. 98 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission also objects to this Request as overbroad, unduly burdensome, and not proportional to the needs of the case. The Commission further reiterates its Objection to Coinbase's Definition and Instruction No. 3, which improperly defines "the Commission" as including each of the SEC's over 4,500 employees. Subject to and without waiving its objections, the Commission admits that certain Commission staff assigned to the investigation into the Bittrex Platform was informed prior to April 17, 2023 that the ICP token was available for trading on the Bittrex Platform. Otherwise, denies.

Request for Admission No. 99

Admit that the SEC does not allege in the *Bittrex* Complaint that ICP tokens were purchased, sold, or traded as investment contracts on the Bittrex Platform.

Answer: The Commission objects to Request No. 99 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. Subject to and without waiving its objections, the Commission admits that the *Bittrex* Complaint does not specifically reference the ICP token. The Commission avers that the *Bittrex* Complaint alleged that "the Bittrex Platform has made available for trading crypto assets that were offered and sold as investment contracts, and thus securities" (*Bittrex* Complaint ¶ 110), and further provided "a non-exhaustive list of six examples of crypto asset securities available for trading on the Bittrex Platform" (*id.* ¶ 141). Otherwise, denies.

Request for Admission No. 100

Admit that, prior to April 17, 2023, the NEAR token was available for trading on the Bittrex Platform.

Answer: The Commission objects to Request No. 100 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to this Request as overbroad, unduly burdensome, and not proportional to the needs of the case. Subject to and without waiving its objections, the Commission asserts that it cannot admit or deny this Request after reasonable inquiry because the Commission does not have access to this information. To the extent a response is required,

then subject to and without waiting its objections, the Commission denies this Request.

Request for Admission No. 101

Admit that the SEC knew, prior to April 17, 2023, that the NEAR token was available for trading on the Bittrex Platform.

Answer: The Commission objects to Request No. 101 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to this Request as overbroad, unduly burdensome, and not proportional to the needs of the case. The Commission further reiterates its Objection to Coinbase's Definition and Instruction No. 3, which improperly defines "the Commission" as including each of the SEC's over 4,500 employees. Subject to and without waiving its objections, the Commission admits that certain Commission staff assigned to the investigation into the Bittrex Platform was informed prior to April 17, 2023 that the NEAR token was available for trading on the Bittrex Platform. Otherwise, denies.

Request for Admission No. 102

Admit that the SEC does not allege in the *Bittrex* Complaint that NEAR tokens were purchased, sold, or traded as investment contracts on the Bittrex Platform.

Answer: The Commission objects to Request No. 102 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. Subject to and without waiving its objections, the Commission admits that the *Bittrex* Complaint does not specifically reference the NEAR token. The Commission avers that the *Bittrex* Complaint alleged that "the Bittrex Platform has made available for trading crypto assets that were offered and sold as investment contracts, and thus securities" (*Bittrex* Complaint ¶ 110), and further provided "a non-exhaustive list of six examples of crypto asset securities available for trading on the Bittrex Platform" (*id.* ¶ 141). Otherwise, denies.

Request for Admission No. 103

Admit that, prior to April 17, 2023, the DASH token was available for trading on the Bittrex Platform.

Answer: The Commission objects to Request No. 103 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to this Request as overbroad, unduly burdensome, and not proportional to the needs of the case. Subject to and without waiving its objections, the Commission admits this Request.

Request for Admission No. 104

Admit that the SEC knew, prior to April 17, 2023, that the DASH token was available for

trading on the Bittrex Platform.

Answer: The Commission objects to Request No. 104 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission also objects to this Request as overbroad, unduly burdensome, and not proportional to the needs of the case. The Commission further reiterates its Objection to Coinbase's Definition and Instruction No. 3, which improperly defines "the Commission" as including each of the SEC's over 4,500 employees. Subject to and without waiving its objections, the Commission admits this Request.

Request for Admission No. 105

Admit that the SEC does not allege in the *Bittrex* Complaint that DASH tokens were purchased, sold, or traded as investment contracts on the Bittrex Platform.

Answer: The Commission objects to Request No. 105 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. Subject to and without waiving its objections, the Commission denies this Request.

Request for Admission No. 106

Admit that, prior to June 5, 2023, the DASH token was available for trading on the Binance Platforms.

Answer: The Commission objects to Request No. 106 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. Subject to and without waiving its objections, the Commission admits that on or about October 15, 2019, Dash announced in its news blog "Binance.US Will List Dash (DASH)." Otherwise, denies.

Request for Admission No. 107

Admit that the SEC knew, prior to June 5, 2023, that the DASH token was available for trading on the Binance Platforms.

Answer: The Commission objects to Request No. 107 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission also objects to this Request as overbroad, unduly burdensome, and not proportional to the needs of the case. The Commission further reiterates its Objection to Coinbase's Definition and Instruction No. 3, which improperly defines "the Commission" as including each of the SEC's over 4,500 employees. Subject to and without waiving its objections, the Commission admits that certain Commission staff assigned to the investigation into the Binance Platforms was informed prior to June 5, 2023 that the DASH token was available for trading on the

Binance Platforms. Otherwise, denies.

Request for Admission No. 108

Admit that the SEC does not allege in the *Binance* Complaint that DASH tokens were purchased, sold, or traded as investment contracts on the Binance Platforms.

Answer: The Commission objects to Request No. 108 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. Subject to and without waiving its objections, the Commission admits that the *Binance* Complaint does not specifically reference the DASH token. The Commission avers that the *Binance* Complaint alleged that "the Binance Platforms … have made available for trading on them crypto assets that are offered and sold as investment contracts, and thus as securities," (*Binance* Complaint ¶ 352) and further provided "a non-exhaustive list of ten Crypto Asset Securities … available on the Binance Platforms" (*id.* ¶ 361). Otherwise, denies.

Request for Admission No. 109

Admit that, prior to June 5, 2023, the VGX token was available for trading on the Binance Platforms.

Answer: The Commission objects to Request No. 109 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to this Request as overbroad, unduly burdensome, and not proportional to the needs of the case. Subject to and without waiving its objections, the Commission asserts that it cannot admit or deny this Request after reasonable inquiry because the Commission does not have access to this information. To the extent a response is required, then subject to and without waiting its objections, the Commission denies this Request.

Request for Admission No. 110

Admit that the SEC knew, prior to June 5, 2023, that the VGX token was available for trading on the Binance Platforms.

Answer: The Commission objects to Request No. 110 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission also objects to this Request as overbroad, unduly burdensome, and not proportional to the needs of the case. The Commission further reiterates its Objection to Coinbase's Definition and Instruction No. 3, which improperly defines "the Commission" as including each of the SEC's over 4,500 employees. Subject to and without waiving its objections, the Commission admits that certain Commission staff assigned to the investigation into the Binance Platforms was informed prior to June 5, 2023 that the VGX token was available for trading on the Binance Platforms. Otherwise, denies.

Request for Admission No. 111

Admit that the SEC does not allege in the *Binance* Complaint that VGX tokens were purchased, sold, or traded as investment contracts on the Binance Platforms.

Answer: The Commission objects to Request No. 111 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. Subject to and without waiving its objections, the Commission admits that the *Binance* Complaint does not specifically reference the VGX token. The Commission avers that the *Binance* Complaint alleged that "the Binance Platforms … have made available for trading on them crypto assets that are offered and sold as investment contracts, and thus as securities," (*Binance* Complaint ¶ 352) and further provided "a non-exhaustive list of ten Crypto Asset Securities … available on the Binance Platforms" (*id.* ¶ 361). Otherwise, denies.

Request for Admission No. 112

Admit that, prior to June 5, 2023, the CHZ token was available for trading on the Binance Platforms.

Answer: The Commission objects to Request No. 112 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to this Request as overbroad, unduly burdensome, and not proportional to the needs of the case. Subject to and without waiving its objections, the Commission admits that on or about September 4, 2019, Binance announced in its "New Cryptocurrency Listing" that "Binance will list Chiliz (CHZ)." Otherwise, denies.

Request for Admission No. 113

Admit that the SEC knew, prior to June 5, 2023, that the CHZ token was available for trading on the Binance Platforms.

Answer: The Commission objects to Request No. 113 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission also objects to this Request as overbroad, unduly burdensome, and not proportional to the needs of the case. The Commission further reiterates its Objection to Coinbase's Definition and Instruction No. 3, which improperly defines "the Commission" as including each of the SEC's over 4,500 employees. Subject to and without waiving its objections, the Commission admits that certain Commission staff assigned to the investigation into the Binance Platforms was informed prior to June 5, 2023 that the CHZ token was available for trading on the Binance Platforms. Otherwise, denies.

Request for Admission No. 114

Admit that the SEC does not allege in the *Binance* Complaint that CHZ tokens were purchased, sold, or traded as investment contracts on the Binance Platforms.

Answer: The Commission objects to Request No. 114 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. Subject to and without waiving its objections, the Commission admits that the *Binance* Complaint does not specifically reference the CHZ token. The Commission avers that the *Binance* Complaint alleged that "the Binance Platforms … have made available for trading on them crypto assets that are offered and sold as investment contracts, and thus as securities," (*Binance* Complaint ¶ 352) and further provided "a non-exhaustive list of ten Crypto Asset Securities … available on the Binance Platforms" (*id.* ¶ 361). Otherwise, denies.

Request for Admission No. 115

Admit that, prior to June 5, 2023, the FLOW token was available for trading on the Binance Platforms.

Answer: The Commission objects to Request No. 115 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to this Request as overbroad, unduly burdensome, and not proportional to the needs of the case. Subject to and without waiving its objections, the Commission admits that on or about October 20, 2022, Binance announced that "Binance.us added support for mainnet FLOW tokens." Otherwise, denies.

Request for Admission No. 116

Admit that the SEC knew, prior to June 5, 2023, that the FLOW token was available for trading on the Binance Platforms.

Answer: The Commission objects to Request No. 116 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission also objects to this Request as overbroad, unduly burdensome, and not proportional to the needs of the case. The Commission further reiterates its Objection to Coinbase's Definition and Instruction No. 3, which improperly defines "the Commission" as including each of the SEC's over 4,500 employees. Subject to and without waiving its objections, the Commission admits that certain Commission staff assigned to the investigation into the Binance Platforms was informed prior to June 5, 2023 that the FLOW token was available for trading on the Binanance.us Platform. Otherwise, denies.

Request for Admission No. 117

Admit that the SEC does not allege in the *Binance* Complaint that FLOW tokens were purchased, sold, or traded as investment contracts on the Binance Platforms.

Answer: The Commission objects to Request No. 117 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and

other equitable defenses. Subject to and without waiving its objections, the Commission admits that the *Binance* Complaint does not specifically reference the FLOW token. The Commission avers that the *Binance* Complaint alleged that "the Binance Platforms … have made available for trading on them crypto assets that are offered and sold as investment contracts, and thus as securities," (*Binance* Complaint ¶ 352) and further provided "a non-exhaustive list of ten Crypto Asset Securities … available on the Binance Platforms" (*id.* ¶ 361). Otherwise, denies.

Request for Admission No. 118

Admit that, prior to June 5, 2023, the ICP token was available for trading on the Binance Platforms.

Answer: The Commission objects to Request No. 118 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to this Request as overbroad, unduly burdensome, and not proportional to the needs of the case. Subject to and without waiving its objections, the Commission admits that on or about May 10, 2021, Binance announced in its "New Cryptocurrency Listing" that "Binance will list Internet Computer (ICP)." Otherwise, denies.

Request for Admission No. 119

Admit that the SEC knew, prior to June 5, 2023, that the ICP token was available for trading on the Binance Platforms.

Answer: The Commission objects to Request No. 119 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission also objects to this Request as overbroad, unduly burdensome, and not proportional to the needs of the case. The Commission further reiterates its Objection to Coinbase's Definition and Instruction No. 3, which improperly defines "the Commission" as including each of the SEC's over 4,500 employees. Subject to and without waiving its objections, the Commission admits that certain Commission staff assigned to the investigation into the Binance Platforms was informed prior to June 5, 2023 that the ICP token was available for trading on the Binance Platforms. Otherwise, denies.

Request for Admission No. 120

Admit that the SEC does not allege in the *Binance* Complaint that ICP tokens were purchased, sold, or traded as investment contracts on the Binance Platforms.

Answer: The Commission objects to Request No. 120 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. Subject to and without waiving its objections, the Commission admits that the *Binance* Complaint does not specifically reference the ICP token. The Commission avers that the *Binance* Complaint alleged that "the Binance Platforms … have made available for trading on them crypto assets that are offered and sold as investment contracts, and thus as securities," (*Binance* Complaint ¶ 352) and

further provided "a non-exhaustive list of ten Crypto Asset Securities … available on the Binance Platforms" (*id.* ¶ 361). Otherwise, denies.

Request for Admission No. 121

Admit that, prior to June 5, 2023, the NEAR token was available for trading on the Binance Platforms.

Answer: The Commission objects to Request No. 121 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to this Request as overbroad, unduly burdensome, and not proportional to the needs of the case. Subject to and without waiving its objections, the Commission admits that on or about October 13, 2020, Binance announced in its "New Cryptocurrency Listing" that "Binance will list Near Protocol." Otherwise, denies.

Request for Admission No. 122

Admit that the SEC knew, prior to June 5, 2023, that the NEAR token was available for trading on the Binance Platforms.

Answer: The Commission objects to Request No. 122 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission also objects to this Request as overbroad, unduly burdensome, and not proportional to the needs of the case. The Commission further reiterates its Objection to Coinbase's Definition and Instruction No. 3, which improperly defines "the Commission" as including each of the SEC's over 4,500 employees. Subject to and without waiving its objections, the Commission admits that certain Commission staff assigned to the investigation into the Binance Platforms was informed prior to June 5, 2023 that the NEAR token was available for trading on the Binance Platforms. Otherwise, denies.

Request for Admission No. 123

Admit that the SEC does not allege in the *Binance* Complaint that NEAR tokens were purchased, sold, or traded as investment contracts on the Binance Platforms.

Answer: The Commission objects to Request No. 123 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. Subject to and without waiving its objections, the Commission admits that the *Binance* Complaint does not specifically reference the NEAR token. The Commission avers that the *Binance* Complaint alleged that "the Binance Platforms … have made available for trading on them crypto assets that are offered and sold as investment contracts, and thus as securities," (*Binance* Complaint ¶ 352) and further provided "a non-exhaustive list of ten Crypto Asset Securities … available on the Binance Platforms" (*id.* ¶ 361). Otherwise, denies.

Request for Admission No. 124

Admit that, in his May 6, 2021 testimony before Congress, Chair Gensler stated that, "I do think that working with Congress, and I think it is only Congress that could really address it, it would be good to consider, if you would ask my thoughts, to consider whether to bring greater investor protection to the crypto exchanges. And I think if that were the case, because right now the exchanges trading in these crypto assets do not have a regulatory framework either at the SEC, or our sister agency, the Commodity Futures Trading Commission, that could instill greater confidence. Right now, there is not a market regulator around these crypto exchanges, and, thus, there is really not a protection against fraud or manipulation."

Answer: The Commission objects to Request No. 124 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. Subject to and without waiving its objections, the Commission admits that attached hereto as Exhibit 1 is a true and correct copy of Chair Gensler's May 6, 2021 testimony before Congress and that its content speaks for itself. Otherwise, denies.

Request for Admission No. 125

Admit that, in a July 7, 2023 letter to Chair Gensler regarding "cryptocurrency exchanges," Senator Elizabeth Warren stated: "As you [Chair Gensler] acknowledged in May, '[cryptocurrency] exchanges do not have a regulatory framework at the SEC or at our sister agency, the Commodity Futures Trading Commission,' and as a result, 'there's really no protection around fraud or manipulation.' Instead, these platforms are generally subject to state- level regulations for money transfer or payment services."

Answer: The Commission objects to Request No. 125 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. Subject to and without waiving its objections, the Commission denies that Senator Elizabeth Warren sent a letter to Chair Gensler with the above quoted language on July 7, 2023. The Commission admits that attached hereto as Exhibit 2 is a true and correct copy of Senator Warren's July 7, 2021 letter to Chair Gensler and that its content speaks for itself. Otherwise, denies.

Request for Admission No. 126

Admit that, in a July 7, 2023 letter to Chair Gensler regarding "cryptocurrency exchanges," Senator Elizabeth Warren stated: "Coinbase recently became the first major cryptocurrency company to list its shares on a U.S. stock exchange when it began trading on the Nasdaq in April 2021 – giving 'mainstream investors who may be wary of directly buying risky digital securities the ability to own stock in a Securities and Exchange Commission-approved business that facilitates the transactions.' Although they describe themselves as cryptocurrency 'exchanges,' these platforms lack the same types of basic regulatory protections as traditional national securities exchanges like the New York Stock Exchange or Nasdaq."

Answer: The Commission objects to Request No. 126 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a

defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. Subject to and without waiving its objections, the Commission denies that Senator Elizabeth Warren sent a letter to Chair Gensler with the above quoted language on July 7, 2023. The Commission admits that attached hereto as Exhibit 2 is a true and correct copy of Senator Warren's July 7, 2021 letter to Chair Gensler and that its content speaks for itself. Otherwise, denies.

Request for Admission No. 127

Admit that, during Session 17 of then-Professor Gary Gensler's "Blockchain and Money" course at the Massachusetts Institute of Technology's Sloan School of Management, then- Professor Gensler explained to his students that "We already know in the US and in many other jurisdictions that three-fourths of the market are not ICOs or not what would be called securities, even in the US, Canada, and Taiwan, the three jurisdictions that follow something similar to the *Howey* Test that we've talked about three-fourths of the market is non-securities. It's just a commodity, a cash crypto."

Answer: The Commission objects to Request No. 127 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. Subject to and without waiving its objections, the Commission asserts that it cannot admit or deny this Request after reasonable inquiry because the Commission does not have access to this information. To the extent a response is required, then subject to and without waiting its objections, the Commission denies this Request.

Request for Admission No. 128

Admit that DAO Token holders were entitled to vote to distribute the ETH "received by a DAO [Entity] generated from projects the DAO [Entity] funded" to DAO Token holders.

Answer: The Commission objects to Request No. 128 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. Subject to and without waiving its objections, the Commission admits that attached hereto as Exhibit 3 is a true and correct copy of the DAO Report and that its content speaks for itself. Otherwise, denies.

Request for Admission No. 129

Admit that Christoph Jentzsch likened the purchase of DAO Tokens to "buying shares in a company and getting … dividends."

Answer: The Commission objects to Request No. 129 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. Subject to and without waiving its objections, the Commission admits that attached hereto as Exhibit 3 is a true and correct copy of the DAO Report and that its content speaks for itself. Otherwise, denies.

Request for Admission No. 130

Admit that the SEC does not view a "common enterprise" as a distinct element of the term "investment contract."

Answer: The Commission objects to Request No. 130 because it improperly seeks a legal conclusion instead of the application of law to specific facts. See Fed. R. Civ. P. 36(a)(1)(A). The Commission further objects to the Request as vague and ambiguous because it is unclear what the undefined term "distinct element" means in the context of this Request. The Commission admits that it has stated, for the purposes of administrative proceedings, a "common enterprise" is part of the analysis under *Howey* but not a "distinct requirement for an investment contract" under *Howey* (*see In re Barkate*, 57 S.E.C. 488, 495 n.13 (Apr. 8, 2004)). The Commission avers that there are divergent standards among the courts of appeals in assessing a "common enterprise" (*see Revak v. SEC Realty Corp.*, 18 F.3d 81, 87 (2d Cir. 1994)), for example the Tenth Circuit does not recognize commonality as the test, but rather looks to the economic reality of the transactions that occurred (*see McGill v. Am. Land & Expl. Co.*, 776 F.2d 923, 925-926 (10th Cir. 1985)). The Commission further avers that courts in the Second Circuit find a common enterprise either by (i) horizontal commonality or (ii) strict vertical commonality (*Revak*, 18 F.3d at 87), which can be demonstrated under a variety of circumstances (*see, e.g.*, *Gary Plastic Packaging Corp. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 756 F.2d 230, 240 (2d Cir. 1985) ("By investigating issuers, marketing the CDs, and creating a secondary market, Merrill Lynch was engaged in a common enterprise within the meaning of *Howey*.")); for the purposes of this action the Commission's position has been and will continue to be that the crypto assets at issue were traded as investment contracts as the term was defined in *Howey* (*Howey*, 328 U.S. 293 at 298-99 (an investment contract is "a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party")) and applied by the Second Circuit. Otherwise, denies.

Request for Admission No. 131

Admit that the 2019 Framework does not advise that a token's "ecosystem" informs whether the token, or transactions in the token, constitutes an investment contract, and thus a security.

Answer: The Commission objects to Request No. 131 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the Request as vague and ambiguous because it is unclear what the undefined term "informs whether" means in the context of this request. Subject to and without waiving its objections, the Commission admits that attached hereto as Exhibit 4 is a true and correct copy of the Framework for "Investment Contract" Analysis of Digital Assets (the "2019 Framework") and that its content speaks for itself. Otherwise, denies.

Request for Admission No. 132

Admit that the DAO Report does not advise that a token's "ecosystem" informs whether the token, or transactions in the token, constitutes an investment contract, and thus a security.

Answer: The Commission objects to Request No. 132 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a

defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the Request as vague and ambiguous because it is unclear what the undefined term "informs whether" means in the context of this request. Subject to and without waiving its objections, the Commission admits that attached hereto as Exhibit 3 is a true and correct copy of the DAO Report and that its content speaks for itself. Otherwise, denies.

Request for Admission No. 133

Admit that the 2019 Framework does not use the word "ecosystem."

Answer: The Commission objects to Request No. 133 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. Subject to and without waiving its objections, the Commission admits that attached hereto as Exhibit 4 is a true and correct copy of the 2019 Framework and that its content speaks for itself. Otherwise, denies.

Request for Admission No. 134

Admit that the DAO Report does not use the word "ecosystem."

Answer: The Commission objects to Request No. 134 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. Subject to and without waiving its objections, the Commission admits that attached hereto as Exhibit 3 is a true and correct copy of the DAO Report and that its content speaks for itself. Otherwise, denies.

Request for Admission No. 135

Admit that Digital Assets comprise a multi-trillion-dollar industry.

Answer: The Commission objects to Request No. 135 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the Request as vague and ambiguous because it is unclear what the undefined terms "comprise" and "industry" mean in the context of this request. Subject to and without waiving its objections, the Commission asserts that it cannot admit or deny this Request after reasonable inquiry due to the ambiguity and vagueness of the Request. To the extent a response is required, then subject to and without waiting its objections, the Commission denies this Request.

Request for Admission No. 136

Admit that Bitcoin has an ecosystem.

Answer: The Commission objects to Request No. 136 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a

defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission also objects to this Request as overbroad, unduly burdensome, and not proportional to the needs of the case. The Commission further objects to the Request as vague and ambiguous because it is unclear how Coinbase is using the undefined term "ecosystem" in the context of this Request; the Commission will interpret that term to mean the coordinated enterprises contemplated by the issuers and promoters of a specific crypto asset. *SEC v. Coinbase, Inc.*, 2024 WL 1304037, at *3 n.4 (S.D.N.Y. Mar. 27, 2024). Subject to and without waiving its objections, the Commission denies this Request.

Request for Admission No. 137

Admit that ETH has an ecosystem.

Answer: The Commission objects to Request No. 137 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission also objects to this Request as overbroad, unduly burdensome, and not proportional to the needs of the case. The Commission further objects to the Request as vague and ambiguous because it is unclear how Coinbase is using the undefined term "ecosystem" in the context of this Request; the Commission will interpret that term to mean the coordinated enterprises contemplated by the issuers and promoters of a specific crypto asset. *SEC v. Coinbase, Inc.*, 2024 WL 1304037, at *3 n.4 (S.D.N.Y. Mar. 27, 2024). Subject to and without waiving its objections, the Commission asserts that it cannot admit or deny this Request after reasonable inquiry because whether "ETH has an ecosystem" is beyond the scope of the Investigation. To the extent a response is required, then subject to and without waiting its objections, the Commission denies this Request.

Request for Admission No. 138

Admit that the SEC is not asserting in this action that a unit of SOL, or a transaction in a unit of SOL, is, or has ever been, a "note" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 138 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of SOL, or a transaction in a unit of SOL, is, or has ever been, a "note" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of SOL, or a transaction in a unit of SOL is, or has ever been, a "note" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 139

Admit that the SEC is not asserting in this action that a unit of SOL, or a transaction in a unit of SOL, is, or has ever been, a "stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 139 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of SOL, or a transaction in a unit of SOL, is, or has ever been, a "stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of SOL, or a transaction in a unit of SOL is, or has ever been, a "stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 140

Admit that the SEC is not asserting in this action that a unit of SOL, or a transaction in a unit of SOL, is, or has ever been, a "treasury stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 140 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of SOL, or a transaction in a unit of SOL, is, or has ever been, a "treasury stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of SOL, or a transaction in a unit of SOL is, or has ever been, a "treasury stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 141

Admit that the SEC is not asserting in this action that a unit of SOL, or a transaction in a unit of SOL, is, or has ever been, a "security future" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 141 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal

conclusion as to whether a unit of SOL, or a transaction in a unit of SOL, is, or has ever been, a "security future" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of SOL, or a transaction in a unit of SOL is, or has ever been, a "security future" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 142

Admit that the SEC is not asserting in this action that a unit of SOL, or a transaction in a unit of SOL, is, or has ever been, a "security-based swap" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 142 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of SOL, or a transaction in a unit of SOL, is, or has ever been, a "security-based swap" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of SOL, or a transaction in a unit of SOL is, or has ever been, a "security-based swap" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 143

Admit that the SEC is not asserting in this action that a unit of SOL, or a transaction in a unit of SOL, is, or has ever been, a "bond" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 143 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of SOL, or a transaction in a unit of SOL, is, or has ever been, a "bond" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of SOL, or a transaction in a unit of SOL is, or has ever been, a "bond" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 144

Admit that the SEC is not asserting in this action that a unit of SOL, or a transaction in a unit of SOL, is, or has ever been, a "debenture" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 144 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of SOL, or a transaction in a unit of SOL, is, or has ever been, a "debenture" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of SOL, or a transaction in a unit of SOL is, or has ever been, a "debenture" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 145

Admit that the SEC is not asserting in this action that a unit of SOL, or a transaction in a unit of SOL, is, or has ever been, a "certificate of interest or participation in any profit-sharing agreement" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 145 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of SOL, or a transaction in a unit of SOL, is, or has ever been, a "certificate of interest or participation in any profit-sharing agreement" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of SOL, or a transaction in a unit of SOL is, or has ever been, a "certificate of interest or participation in any profit-sharing agreement" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 146

Admit that the SEC is not asserting in this action that a unit of SOL, or a transaction in a unit of SOL, is, or has ever been, a "collateral-trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 146 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and

other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of SOL, or a transaction in a unit of SOL, is, or has ever been, a "collateral-trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of SOL, or a transaction in a unit of SOL is, or has ever been, a "collateral-trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 147

Admit that the SEC is not asserting in this action that a unit of SOL, or a transaction in a unit of SOL, is, or has ever been, a "preorganization certificate or subscription" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 147 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of SOL, or a transaction in a unit of SOL, is, or has ever been, a "preorganization certificate or subscription" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of SOL, or a transaction in a unit of SOL is, or has ever been, a "preorganization certificate or subscription" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 148

Admit that the SEC is not asserting in this action that a unit of SOL, or a transaction in a unit of SOL, is, or has ever been, a "transferable share" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 148 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of SOL, or a transaction in a unit of SOL, is, or has ever been, a "transferable share" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of SOL, or a transaction in a unit of SOL is, or has ever been, a "transferable share" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 149

Admit that the SEC is not asserting in this action that a unit of SOL, or a transaction in a unit of SOL, is, or has ever been, a "voting trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 149 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of SOL, or a transaction in a unit of SOL, is, or has ever been, a "voting trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of SOL, or a transaction in a unit of SOL is, or has ever been, a "voting trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 150

Admit that the SEC is not asserting in this action that a unit of SOL, or a transaction in a unit of SOL, is, or has ever been, a "certificate of deposit for a security" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 150 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of SOL, or a transaction in a unit of SOL, is, or has ever been, a "certificate of deposit for a security" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of SOL, or a transaction in a unit of SOL is, or has ever been, a "certificate of deposit for a security" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 151

Admit that the SEC is not asserting in this action that a unit of SOL, or a transaction in a unit of SOL, is, or has ever been, a "put, call, straggle, option, or privilege entered into on a national securities exchange relating to foreign currency" as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 151 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and

other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of SOL, or a transaction in a unit of SOL, is, or has ever been, a "put, call, [straddle], option, or privilege entered into on a national securities exchange relating to foreign currency" as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of SOL, or a transaction in a unit of SOL is, or has ever been, a "put, call, [straddle], option, or privilege entered into on a national securities exchange relating to foreign currency" as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 152

Admit that the SEC is not asserting in this action that a unit of SOL, or a transaction in a unit of SOL, is, or has ever been, a "certificate of deposit" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 152 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of SOL, or a transaction in a unit of SOL, is, or has ever been, a "certificate of deposit" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of SOL, or a transaction in a unit of SOL is, or has ever been, a "certificate of deposit" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 153

Admit that the SEC is not asserting in this action that a unit of SOL, or a transaction in a unit of SOL, is, or has ever been, an "instrument commonly known as a 'security'" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 153 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of SOL, or a transaction in a unit of SOL, is, or has ever been, an "instrument commonly known as a 'security'" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of SOL, or a transaction in a unit of SOL is, or has ever been, an "instrument commonly known as a 'security'" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on

the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 154

Admit that the SEC is not asserting in this action that a unit of SOL, or a transaction in a unit of SOL, is, or has ever been, a "certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase" any of the various terms described above in Request Nos. 138 through 153, as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 154 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of SOL, or a transaction in a unit of SOL, is, or has ever been, a "certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase" any of the various terms described above in Request Nos. 138 through 153, as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of SOL, or a transaction in a unit of SOL is, or has ever been, a "certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase" any of the various terms described above in Request Nos. 138 through 153, as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 155

Admit that the SEC is not asserting in this action that a unit of ADA, or a transaction in a unit of ADA, is, or has ever been, a "note" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 155 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of ADA, or a transaction in a unit of ADA, is, or has ever been, a "note" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of ADA, or a transaction in a unit of ADA is, or has ever been, a "note" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 156

Admit that the SEC is not asserting in this action that a unit of ADA, or a transaction in a unit of ADA, is, or has ever been, a "stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 156 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of ADA, or a transaction in a unit of ADA, is, or has ever been, a "stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of ADA, or a transaction in a unit of ADA is, or has ever been, a "stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 157

Admit that the SEC is not asserting in this action that a unit of ADA, or a transaction in a unit of ADA, is, or has ever been, a "treasury stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 157 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of ADA, or a transaction in a unit of ADA, is, or has ever been, a "treasury stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of ADA, or a transaction in a unit of ADA is, or has ever been, a "treasury stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 158

Admit that the SEC is not asserting in this action that a unit of ADA, or a transaction in a unit of ADA, is, or has ever been, a "security future" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 158 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal

conclusion as to whether a unit of ADA, or a transaction in a unit of ADA, is, or has ever been, a "security future" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of ADA, or a transaction in a unit of ADA is, or has ever been, a "security future" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 159

Admit that the SEC is not asserting in this action that a unit of ADA, or a transaction in a unit of ADA, is, or has ever been, a "security-based swap" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 159 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of ADA, or a transaction in a unit of ADA, is, or has ever been, a "security-based swap" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of ADA, or a transaction in a unit of ADA is, or has ever been, a "security-based swap" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 160

Admit that the SEC is not asserting in this action that a unit of ADA, or a transaction in a unit of ADA, is, or has ever been, a "bond" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 160 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of ADA, or a transaction in a unit of ADA, is, or has ever been, a "bond" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of ADA, or a transaction in a unit of ADA is, or has ever been, a "bond" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 161

Admit that the SEC is not asserting in this action that a unit of ADA, or a transaction in a unit of ADA, is, or has ever been, a "debenture" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 161 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of ADA, or a transaction in a unit of ADA, is, or has ever been, a "debenture" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of ADA, or a transaction in a unit of ADA is, or has ever been, a "debenture" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 162

Admit that the SEC is not asserting in this action that a unit of ADA, or a transaction in a unit of ADA, is, or has ever been, a "certificate of interest or participation in any profit-sharing agreement" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C.§ 78c(a)(10).

Answer: The Commission objects to Request No. 162 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of ADA, or a transaction in a unit of ADA, is, or has ever been, a "certificate of interest or participation in any profit-sharing agreement" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C.§ 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of ADA, or a transaction in a unit of ADA is, or has ever been, a "certificate of interest or participation in any profit-sharing agreement" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C.§ 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 163

Admit that the SEC is not asserting in this action that a unit of ADA, or a transaction in a unit of ADA, is, or has ever been, a "collateral-trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 163 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and

other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of ADA, or a transaction in a unit of ADA, is, or has ever been, a "collateral-trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of ADA, or a transaction in a unit of ADA is, or has ever been, a "collateral-trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 164

Admit that the SEC is not asserting in this action that a unit of ADA, or a transaction in a unit of ADA, is, or has ever been, a "preorganization certificate or subscription" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 164 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of ADA, or a transaction in a unit of ADA, is, or has ever been, a "preorganization certificate or subscription" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of ADA, or a transaction in a unit of ADA is, or has ever been, a "preorganization certificate or subscription" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 165

Admit that the SEC is not asserting in this action that a unit of ADA, or a transaction in a unit of ADA, is, or has ever been, a "transferable share" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 165 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of ADA, or a transaction in a unit of ADA, is, or has ever been, a "transferable share" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of ADA, or a transaction in a unit of ADA is, or has ever been, a "transferable share" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 166

Admit that the SEC is not asserting in this action that a unit of ADA, or a transaction in a unit of ADA, is, or has ever been, a "voting trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 166 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of ADA, or a transaction in a unit of ADA, is, or has ever been, a "voting trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of ADA, or a transaction in a unit of ADA is, or has ever been, a "voting trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 167

Admit that the SEC is not asserting in this action that a unit of ADA, or a transaction in a unit of ADA, is, or has ever been, a "certificate of deposit for a security" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 167 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of ADA, or a transaction in a unit of ADA, is, or has ever been, a "certificate of deposit for a security" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of ADA, or a transaction in a unit of ADA is, or has ever been, a "certificate of deposit for a security" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 168

Admit that the SEC is not asserting in this action that a unit of ADA, or a transaction in a unit of ADA, is, or has ever been, a "put, call, straggle, option, or privilege entered into on a national securities exchange relating to foreign currency" as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 168 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and

other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of ADA, or a transaction in a unit of ADA, is, or has ever been, a "put, call, [straddle], option, or privilege entered into on a national securities exchange relating to foreign currency" as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of ADA, or a transaction in a unit of ADA is, or has ever been, a "put, call, [straddle], option, or privilege entered into on a national securities exchange relating to foreign currency" as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 169

Admit that the SEC is not asserting in this action that a unit of ADA, or a transaction in a unit of ADA, is, or has ever been, a "certificate of deposit" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 169 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of ADA, or a transaction in a unit of ADA, is, or has ever been, a "certificate of deposit" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of ADA, or a transaction in a unit of ADA is, or has ever been, a "certificate of deposit" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 170

Admit that the SEC is not asserting in this action that a unit of ADA, or a transaction in a unit of ADA, is, or has ever been, an "instrument commonly known as a 'security'" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 170 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of ADA, or a transaction in a unit of ADA, is, or has ever been, an "instrument commonly known as a 'security'" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of ADA, or a transaction in a unit of ADA is, or has ever been, an "instrument commonly known as a 'security'" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on

the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 171

Admit that the SEC is not asserting in this action that a unit of ADA, or a transaction in a unit of ADA, is, or has ever been, a "certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase" any of the various terms described above in Request Nos. 155 through 170, as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 171 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of ADA, or a transaction in a unit of ADA, is, or has ever been, a "certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase" any of the various terms described above in Request Nos. 155 through 170, as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of ADA, or a transaction in a unit of ADA is, or has ever been, a "certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase" any of the various terms described above in Request Nos. 155 through 170, as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 172

Admit that the SEC is not asserting in this action that a unit of MATIC, or a transaction in a unit of MATIC, is, or has ever been, a "note" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 172 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of MATIC, or a transaction in a unit of MATIC, is, or has ever been, a "note" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of MATIC, or a transaction in a unit of MATIC is, or has ever been, a "note" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 173

Admit that the SEC is not asserting in this action that a unit of MATIC, or a transaction in a unit of MATIC, is, or has ever been, a "stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 173 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of MATIC, or a transaction in a unit of MATIC, is, or has ever been, a "stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of MATIC, or a transaction in a unit of MATIC is, or has ever been, a "stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 174

Admit that the SEC is not asserting in this action that a unit of MATIC, or a transaction in a unit of MATIC, is, or has ever been, a "treasury stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 174 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of MATIC, or a transaction in a unit of MATIC, is, or has ever been, a "treasury stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of MATIC, or a transaction in a unit of MATIC is, or has ever been, a "treasury stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 175

Admit that the SEC is not asserting in this action that a unit of MATIC, or a transaction in a unit of MATIC, is, or has ever been, a "security future" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 175 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal

conclusion as to whether a unit of MATIC, or a transaction in a unit of MATIC, is, or has ever been, a "security future" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of MATIC, or a transaction in a unit of MATIC is, or has ever been, a "security future" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 176

Admit that the SEC is not asserting in this action that a unit of MATIC, or a transaction in a unit of MATIC, is, or has ever been, a "security-based swap" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 176 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of MATIC, or a transaction in a unit of MATIC, is, or has ever been, a "security-based swap" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of MATIC, or a transaction in a unit of MATIC is, or has ever been, a "security-based swap" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 177

Admit that the SEC is not asserting in this action that a unit of MATIC, or a transaction in a unit of MATIC, is, or has ever been, a "bond" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 177 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of MATIC, or a transaction in a unit of MATIC, is, or has ever been, a "bond" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of MATIC, or a transaction in a unit of MATIC is, or has ever been, a "bond" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 178

Admit that the SEC is not asserting in this action that a unit of MATIC, or a transaction in a unit of MATIC, is, or has ever been, a "debenture" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 178 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of MATIC, or a transaction in a unit of MATIC, is, or has ever been, a "debenture" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of MATIC, or a transaction in a unit of MATIC is, or has ever been, a "debenture" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 179

Admit that the SEC is not asserting in this action that a unit of MATIC, or a transaction in a unit of MATIC, is, or has ever been, a "certificate of interest or participation in any profit- sharing agreement" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 179 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of MATIC, or a transaction in a unit of MATIC, is, or has ever been, a "certificate of interest or participation in any profit- sharing agreement" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of MATIC, or a transaction in a unit of MATIC is, or has ever been, a "certificate of interest or participation in any profit- sharing agreement" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 180

Admit that the SEC is not asserting in this action that a unit of MATIC, or a transaction in a unit of MATIC, is, or has ever been, a "collateral-trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 180 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a

defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of MATIC, or a transaction in a unit of MATIC, is, or has ever been, a "collateral-trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of MATIC, or a transaction in a unit of MATIC is, or has ever been, a "collateral-trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 181

Admit that the SEC is not asserting in this action that a unit of MATIC, or a transaction in a unit of MATIC, is, or has ever been, a "preorganization certificate or subscription" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 181 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of MATIC, or a transaction in a unit of MATIC, is, or has ever been, a "preorganization certificate or subscription" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of MATIC, or a transaction in a unit of MATIC is, or has ever been, a "preorganization certificate or subscription" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 182

Admit that the SEC is not asserting in this action that a unit of MATIC, or a transaction in a unit of MATIC, is, or has ever been, a "transferable share" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 182 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of MATIC, or a transaction in a unit of MATIC, is, or has ever been, a "transferable share" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of MATIC, or a transaction in a unit of MATIC is, or has ever been, a "transferable share" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances

that surround its offer and sale. Otherwise, denies.

Request for Admission No. 183

Admit that the SEC is not asserting in this action that a unit of MATIC, or a transaction in a unit of MATIC, is, or has ever been, a "voting trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 183 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of MATIC, or a transaction in a unit of MATIC, is, or has ever been, a "voting trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of MATIC, or a transaction in a unit of MATIC is, or has ever been, a "voting trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 184

Admit that the SEC is not asserting in this action that a unit of MATIC, or a transaction in a unit of MATIC, is, or has ever been, a "certificate of deposit for a security" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 184 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of MATIC, or a transaction in a unit of MATIC, is, or has ever been, a "certificate of deposit for a security" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of MATIC, or a transaction in a unit of MATIC is, or has ever been, a "certificate of deposit for a security" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 185

Admit that the SEC is not asserting in this action that a unit of MATIC, or a transaction in a unit of MATIC, is, or has ever been, a "put, call, straggle, option, or privilege entered into on a national securities exchange relating to foreign currency" as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 185 because it is not relevant to any parties'

claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of MATIC, or a transaction in a unit of MATIC, is, or has ever been, a "put, call, [straddle], option, or privilege entered into on a national securities exchange relating to foreign currency" as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of MATIC, or a transaction in a unit of MATIC is, or has ever been, a "put, call, [straddle], option, or privilege entered into on a national securities exchange relating to foreign currency" as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 186

Admit that the SEC is not asserting in this action that a unit of MATIC, or a transaction in a unit of MATIC, is, or has ever been, a "certificate of deposit" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 186 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of MATIC, or a transaction in a unit of MATIC, is, or has ever been, a "certificate of deposit" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of MATIC, or a transaction in a unit of MATIC is, or has ever been, a "certificate of deposit" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 187

Admit that the SEC is not asserting in this action that a unit of MATIC, or a transaction in a unit of MATIC, is, or has ever been, an "instrument commonly known as a 'security'" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 187 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of MATIC, or a transaction in a unit of MATIC, is, or has ever been, an "instrument commonly known as a 'security'" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of MATIC, or a transaction in a unit of MATIC is, or has ever been, an "instrument commonly known as a 'security'" as that term is

used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 188

Admit that the SEC is not asserting in this action that a unit of MATIC, or a transaction in a unit of MATIC, is, or has ever been, a "certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase" any of the various terms described above in Request Nos. 172 through 187, as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 188 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of MATIC, or a transaction in a unit of MATIC, is, or has ever been, a "certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase" any of the various terms described above in Request Nos. 172 through 187, as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of MATIC, or a transaction in a unit of MATIC is, or has ever been, a "certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase" any of the various terms described above in Request Nos. 172 through 187, as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 189

Admit that the SEC is not asserting in this action that a unit of FIL, or a transaction in a unit of FIL, is, or has ever been, a "note" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 189 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of FIL, or a transaction in a unit of FIL, is, or has ever been, a "note" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of FIL, or a transaction in a unit of FIL is, or has ever been, a "note" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 190

Admit that the SEC is not asserting in this action that a unit of FIL, or a transaction in a unit of FIL, is, or has ever been, a "stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 190 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of FIL, or a transaction in a unit of FIL, is, or has ever been, a "stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of FIL, or a transaction in a unit of FIL is, or has ever been, a "stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 191

Admit that the SEC is not asserting in this action that a unit of FIL, or a transaction in a unit of FIL, is, or has ever been, a "treasury stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 191 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of FIL, or a transaction in a unit of FIL, is, or has ever been, a "treasury stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of FIL, or a transaction in a unit of FIL is, or has ever been, a "treasury stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 192

Admit that the SEC is not asserting in this action that a unit of FIL, or a transaction in a unit of FIL, is, or has ever been, a "security future" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 192 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal

conclusion as to whether a unit of FIL, or a transaction in a unit of FIL, is, or has ever been, a "security future" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of FIL, or a transaction in a unit of FIL is, or has ever been, a "security future" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 193

Admit that the SEC is not asserting in this action that a unit of FIL, or a transaction in a unit of FIL, is, or has ever been, a "security-based swap" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 193 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of FIL, or a transaction in a unit of FIL, is, or has ever been, a "security-based swap" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of FIL, or a transaction in a unit of FIL is, or has ever been, a "security-based swap" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 194

Admit that the SEC is not asserting in this action that a unit of FIL, or a transaction in a unit of FIL, is, or has ever been, a "bond" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 194 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of FIL, or a transaction in a unit of FIL, is, or has ever been, a "bond" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of FIL, or a transaction in a unit of FIL is, or has ever been, a "bond" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 195

Admit that the SEC is not asserting in this action that a unit of FIL, or a transaction in a unit of FIL, is, or has ever been, a "debenture" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 195 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of FIL, or a transaction in a unit of FIL, is, or has ever been, a "debenture" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of FIL, or a transaction in a unit of FIL is, or has ever been, a "debenture" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 196

Admit that the SEC is not asserting in this action that a unit of FIL, or a transaction in a unit of FIL, is, or has ever been, a "certificate of interest or participation in any profit-sharing agreement" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 196 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of FIL, or a transaction in a unit of FIL, is, or has ever been, a "certificate of interest or participation in any profit-sharing agreement" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of FIL, or a transaction in a unit of FIL is, or has ever been, a "certificate of interest or participation in any profit-sharing agreement" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 197

Admit that the SEC is not asserting in this action that a unit of FIL, or a transaction in a unit of FIL, is, or has ever been, a "collateral-trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 197 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and

other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of FIL, or a transaction in a unit of FIL, is, or has ever been, a "collateral-trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of FIL, or a transaction in a unit of FIL is, or has ever been, a "collateral-trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 198

Admit that the SEC is not asserting in this action that a unit of FIL, or a transaction in a unit of FIL, is, or has ever been, a "preorganization certificate or subscription" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 198 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of FIL, or a transaction in a unit of FIL, is, or has ever been, a "preorganization certificate or subscription" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of FIL, or a transaction in a unit of FIL is, or has ever been, a "preorganization certificate or subscription" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 199

Admit that the SEC is not asserting in this action that a unit of FIL, or a transaction in a unit of FIL, is, or has ever been, a "transferable share" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 199 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of FIL, or a transaction in a unit of FIL, is, or has ever been, a "transferable share" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of FIL, or a transaction in a unit of FIL is, or has ever been, a "transferable share" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 200

Admit that the SEC is not asserting in this action that a unit of FIL, or a transaction in a unit of FIL, is, or has ever been, a "voting trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 200 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of FIL, or a transaction in a unit of FIL, is, or has ever been, a "voting trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of FIL, or a transaction in a unit of FIL is, or has ever been, a "voting trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 201

Admit that the SEC is not asserting in this action that a unit of FIL, or a transaction in a unit of FIL, is, or has ever been, a "certificate of deposit for a security" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 201 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of FIL, or a transaction in a unit of FIL, is, or has ever been, a "certificate of deposit for a security" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of FIL, or a transaction in a unit of FIL is, or has ever been, a "certificate of deposit for a security" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 202

Admit that the SEC is not asserting in this action that a unit of FIL, or a transaction in a unit of FIL, is, or has ever been, a "put, call, straggle, option, or privilege entered into on a national securities exchange relating to foreign currency" as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 202 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and

other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of FIL, or a transaction in a unit of FIL, is, or has ever been, a "put, call, [straddle], option, or privilege entered into on a national securities exchange relating to foreign currency" as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of FIL, or a transaction in a unit of FIL is, or has ever been, a "put, call, [straddle], option, or privilege entered into on a national securities exchange relating to foreign currency" as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 203

Admit that the SEC is not asserting in this action that a unit of FIL, or a transaction in a unit of FIL, is, or has ever been, a "certificate of deposit" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 203 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of FIL, or a transaction in a unit of FIL, is, or has ever been, a "certificate of deposit" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of FIL, or a transaction in a unit of FIL is, or has ever been, a "certificate of deposit" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 204

Admit that the SEC is not asserting in this action that a unit of FIL, or a transaction in a unit of FIL, is, or has ever been, an "instrument commonly known as a 'security'" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 204 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of FIL, or a transaction in a unit of FIL, is, or has ever been, an "instrument commonly known as a 'security'" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of FIL, or a transaction in a unit of FIL is, or has ever been, an "instrument commonly known as a 'security'" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on

the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 205

Admit that the SEC is not asserting in this action that a unit of FIL, or a transaction in a unit of FIL, is, or has ever been, a "certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase" any of the various terms described above in Request Nos. 189 through 204, as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 205 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of FIL, or a transaction in a unit of FIL, is, or has ever been, a "certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase" any of the various terms described above in Request Nos. 189 through 204, as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of FIL, or a transaction in a unit of FIL is, or has ever been, a "certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase" any of the various terms described above in Request Nos. 189 through 204, as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 206

Admit that the SEC is not asserting in this action that a unit of SAND, or a transaction in a unit of SAND, is, or has ever been, a "note" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 206 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of SAND, or a transaction in a unit of SAND, is, or has ever been, a "note" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of SAND, or a transaction in a unit of SAND is, or has ever been, a "note" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 207

Admit that the SEC is not asserting in this action that a unit of SAND, or a transaction in a unit of SAND, is, or has ever been, a "stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 207 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of SAND, or a transaction in a unit of SAND, is, or has ever been, a "stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of SAND, or a transaction in a unit of SAND is, or has ever been, a "stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 208

Admit that the SEC is not asserting in this action that a unit of SAND, or a transaction in a unit of SAND, is, or has ever been, a "treasury stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 208 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of SAND, or a transaction in a unit of SAND, is, or has ever been, a "treasury stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of SAND, or a transaction in a unit of SAND is, or has ever been, a "treasury stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 209

Admit that the SEC is not asserting in this action that a unit of SAND, or a transaction in a unit of SAND, is, or has ever been, a "security future" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 209 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal

conclusion as to whether a unit of SAND, or a transaction in a unit of SAND, is, or has ever been, a "security future" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of SAND, or a transaction in a unit of SAND is, or has ever been, a "security future" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 210

Admit that the SEC is not asserting in this action that a unit of SAND, or a transaction in a unit of SAND, is, or has ever been, a "security-based swap" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 210 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of SAND, or a transaction in a unit of SAND, is, or has ever been, a "security-based swap" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of SAND, or a transaction in a unit of SAND is, or has ever been, a "security-based swap" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 211

Admit that the SEC is not asserting in this action that a unit of SAND, or a transaction in a unit of SAND, is, or has ever been, a "bond" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 211 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of SAND, or a transaction in a unit of SAND, is, or has ever been, a "bond" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of SAND, or a transaction in a unit of SAND is, or has ever been, a "bond" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 212

Admit that the SEC is not asserting in this action that a unit of SAND, or a transaction in a unit of SAND, is, or has ever been, a "debenture" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 212 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of SAND, or a transaction in a unit of SAND, is, or has ever been, a "debenture" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of SAND, or a transaction in a unit of SAND is, or has ever been, a "debenture" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 213

Admit that the SEC is not asserting in this action that a unit of SAND, or a transaction in a unit of SAND, is, or has ever been, a "certificate of interest or participation in any profit- sharing agreement" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 213 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of SAND, or a transaction in a unit of SAND, is, or has ever been, a "certificate of interest or participation in any profit- sharing agreement" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of SAND, or a transaction in a unit of SAND is, or has ever been, a "certificate of interest or participation in any profit- sharing agreement" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 214

Admit that the SEC is not asserting in this action that a unit of SAND, or a transaction in a unit of SAND, is, or has ever been, a "collateral-trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 214 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a

defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of SAND, or a transaction in a unit of SAND, is, or has ever been, a "collateral-trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of SAND, or a transaction in a unit of SAND is, or has ever been, a "collateral-trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 215

Admit that the SEC is not asserting in this action that a unit of SAND, or a transaction in a unit of SAND, is, or has ever been, a "preorganization certificate or subscription" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 215 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of SAND, or a transaction in a unit of SAND, is, or has ever been, a "preorganization certificate or subscription" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of SAND, or a transaction in a unit of SAND is, or has ever been, a "preorganization certificate or subscription" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 216

Admit that the SEC is not asserting in this action that a unit of SAND, or a transaction in a unit of SAND, is, or has ever been, a "transferable share" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 216 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of SAND, or a transaction in a unit of SAND, is, or has ever been, a "transferable share" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of SAND, or a transaction in a unit of SAND is, or has ever been, a "transferable share" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances

that surround its offer and sale. Otherwise, denies.

Request for Admission No. 217

Admit that the SEC is not asserting in this action that a unit of SAND, or a transaction in a unit of SAND, is, or has ever been, a "voting trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 217 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of SAND, or a transaction in a unit of SAND, is, or has ever been, a "voting trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of SAND, or a transaction in a unit of SAND is, or has ever been, a "voting trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 218

Admit that the SEC is not asserting in this action that a unit of SAND, or a transaction in a unit of SAND, is, or has ever been, a "certificate of deposit for a security" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 218 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of SAND, or a transaction in a unit of SAND, is, or has ever been, a "certificate of deposit for a security" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of SAND, or a transaction in a unit of SAND is, or has ever been, a "certificate of deposit for a security" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 219

Admit that the SEC is not asserting in this action that a unit of SAND, or a transaction in a unit of SAND, is, or has ever been, a "put, call, straggle, option, or privilege entered into on a national securities exchange relating to foreign currency" as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 219 because it is not relevant to any parties'

claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of SAND, or a transaction in a unit of SAND, is, or has ever been, a "put, call, [straddle], option, or privilege entered into on a national securities exchange relating to foreign currency" as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of SAND, or a transaction in a unit of SAND is, or has ever been, a "put, call, [straddle], option, or privilege entered into on a national securities exchange relating to foreign currency" as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 220

Admit that the SEC is not asserting in this action that a unit of SAND, or a transaction in a unit of SAND, is, or has ever been, a "certificate of deposit" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 220 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of SAND, or a transaction in a unit of SAND, is, or has ever been, a "certificate of deposit" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of SAND, or a transaction in a unit of SAND is, or has ever been, a "certificate of deposit" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 221

Admit that the SEC is not asserting in this action that a unit of SAND, or a transaction in a unit of SAND, is, or has ever been, an "instrument commonly known as a 'security'" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 221 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of SAND, or a transaction in a unit of SAND, is, or has ever been, an "instrument commonly known as a 'security'" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of SAND, or a transaction in a unit of SAND is, or has ever been, an "instrument commonly known as a 'security'" as that term is used

in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 222

Admit that the SEC is not asserting in this action that a unit of SAND, or a transaction in a unit of SAND, is, or has ever been, a "certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase" any of the various terms described above in Request Nos. 206 through 221, as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 222 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of SAND, or a transaction in a unit of SAND, is, or has ever been, a "certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase" any of the various terms described above in Request Nos. 206 through 221, as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of SAND, or a transaction in a unit of SAND is, or has ever been, a "certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase" any of the various terms described above in Request Nos. 206 through 221, as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 223

Admit that the SEC is not asserting in this action that a unit of AXS, or a transaction in a unit of AXS, is, or has ever been, a "note" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 223 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of AXS, or a transaction in a unit of AXS, is, or has ever been, a "note" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of AXS, or a transaction in a unit of AXS is, or has ever been, a "note" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 224

Admit that the SEC is not asserting in this action that a unit of AXS, or a transaction in a unit of AXS, is, or has ever been, a "stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 224 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of AXS, or a transaction in a unit of AXS, is, or has ever been, a "stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of AXS, or a transaction in a unit of AXS is, or has ever been, a "stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 225

Admit that the SEC is not asserting in this action that a unit of AXS, or a transaction in a unit of AXS, is, or has ever been, a "treasury stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 225 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of AXS, or a transaction in a unit of AXS, is, or has ever been, a "treasury stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of AXS, or a transaction in a unit of AXS is, or has ever been, a "treasury stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 226

Admit that the SEC is not asserting in this action that a unit of AXS, or a transaction in a unit of AXS, is, or has ever been, a "security future" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 226 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal

conclusion as to whether a unit of AXS, or a transaction in a unit of AXS, is, or has ever been, a "security future" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of AXS, or a transaction in a unit of AXS is, or has ever been, a "security future" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 227

Admit that the SEC is not asserting in this action that a unit of AXS, or a transaction in a unit of AXS, is, or has ever been, a "security-based swap" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 227 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of AXS, or a transaction in a unit of AXS, is, or has ever been, a "security-based swap" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of AXS, or a transaction in a unit of AXS is, or has ever been, a "security-based swap" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 228

Admit that the SEC is not asserting in this action that a unit of AXS, or a transaction in a unit of AXS, is, or has ever been, a "bond" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 228 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of AXS, or a transaction in a unit of AXS, is, or has ever been, a "bond" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of AXS, or a transaction in a unit of AXS is, or has ever been, a "bond" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 229

Admit that the SEC is not asserting in this action that a unit of AXS, or a transaction in a unit of AXS, is, or has ever been, a "debenture" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 229 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of AXS, or a transaction in a unit of AXS, is, or has ever been, a "debenture" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of AXS, or a transaction in a unit of AXS is, or has ever been, a "debenture" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 230

Admit that the SEC is not asserting in this action that a unit of AXS, or a transaction in a unit of AXS, is, or has ever been, a "certificate of interest or participation in any profit-sharing agreement" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 230 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of AXS, or a transaction in a unit of AXS, is, or has ever been, a "certificate of interest or participation in any profit-sharing agreement" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of AXS, or a transaction in a unit of AXS is, or has ever been, a "certificate of interest or participation in any profit-sharing agreement" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 231

Admit that the SEC is not asserting in this action that a unit of AXS, or a transaction in a unit of AXS, is, or has ever been, a "collateral-trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 231 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and

other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of AXS, or a transaction in a unit of AXS, is, or has ever been, a "collateral-trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of AXS, or a transaction in a unit of AXS is, or has ever been, a "collateral-trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 232

Admit that the SEC is not asserting in this action that a unit of AXS, or a transaction in a unit of AXS, is, or has ever been, a "preorganization certificate or subscription" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 232 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of AXS, or a transaction in a unit of AXS, is, or has ever been, a "preorganization certificate or subscription" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of AXS, or a transaction in a unit of AXS is, or has ever been, a "preorganization certificate or subscription" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 233

Admit that the SEC is not asserting in this action that a unit of AXS, or a transaction in a unit of AXS, is, or has ever been, a "transferable share" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 233 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of AXS, or a transaction in a unit of AXS, is, or has ever been, a "transferable share" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of AXS, or a transaction in a unit of AXS is, or has ever been, a "transferable share" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 234

Admit that the SEC is not asserting in this action that a unit of AXS, or a transaction in a unit of AXS, is, or has ever been, a "voting trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 234 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of AXS, or a transaction in a unit of AXS, is, or has ever been, a "voting trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of AXS, or a transaction in a unit of AXS is, or has ever been, a "voting trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 235

Admit that the SEC is not asserting in this action that a unit of AXS, or a transaction in a unit of AXS, is, or has ever been, a "certificate of deposit for a security" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 235 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of AXS, or a transaction in a unit of AXS, is, or has ever been, a "certificate of deposit for a security" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of AXS, or a transaction in a unit of AXS is, or has ever been, a "certificate of deposit for a security" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 236

Admit that the SEC is not asserting in this action that a unit of AXS, or a transaction in a unit of AXS, is, or has ever been, a "put, call, straggle, option, or privilege entered into on a national securities exchange relating to foreign currency" as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 236 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and

other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of AXS, or a transaction in a unit of AXS, is, or has ever been, a "put, call, [straddle], option, or privilege entered into on a national securities exchange relating to foreign currency" as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of AXS, or a transaction in a unit of AXS is, or has ever been, a "put, call, [straddle], option, or privilege entered into on a national securities exchange relating to foreign currency" as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 237

Admit that the SEC is not asserting in this action that a unit of AXS, or a transaction in a unit of AXS, is, or has ever been, a "certificate of deposit" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 237 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of AXS, or a transaction in a unit of AXS, is, or has ever been, a "certificate of deposit" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of AXS, or a transaction in a unit of AXS is, or has ever been, a "certificate of deposit" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 238

Admit that the SEC is not asserting in this action that a unit of AXS, or a transaction in a unit of AXS, is, or has ever been, an "instrument commonly known as a 'security'" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 238 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of AXS, or a transaction in a unit of AXS, is, or has ever been, an "instrument commonly known as a 'security'" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of AXS, or a transaction in a unit of AXS is, or has ever been, an "instrument commonly known as a 'security'" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on

the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 239

Admit that the SEC is not asserting in this action that a unit of AXS, or a transaction in a unit of AXS, is, or has ever been, a "certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase" any of the various terms described above in Request Nos. 224 through 238, as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 239 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of AXS, or a transaction in a unit of AXS, is, or has ever been, a "certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase" any of the various terms described above in Request Nos. 224 through 238, as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of AXS, or a transaction in a unit of AXS is, or has ever been, a "certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase" any of the various terms described above in Request Nos. 224 through 238, as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 240

Admit that the SEC is not asserting in this action that a unit of CHZ, or a transaction in a unit of CHZ, is, or has ever been, a "note" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 240 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of CHZ, or a transaction in a unit of CHZ, is, or has ever been, a "note" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of CHZ, or a transaction in a unit of CHZ is, or has ever been, a "note" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 241

Admit that the SEC is not asserting in this action that a unit of CHZ, or a transaction in a unit of CHZ, is, or has ever been, a "stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 241 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of CHZ, or a transaction in a unit of CHZ, is, or has ever been, a "stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of CHZ, or a transaction in a unit of CHZ is, or has ever been, a "stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 242

Admit that the SEC is not asserting in this action that a unit of CHZ, or a transaction in a unit of CHZ, is, or has ever been, a "treasury stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 242 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of CHZ, or a transaction in a unit of CHZ, is, or has ever been, a "treasury stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of CHZ, or a transaction in a unit of CHZ is, or has ever been, a "treasury stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 243

Admit that the SEC is not asserting in this action that a unit of CHZ, or a transaction in a unit of CHZ, is, or has ever been, a "security future" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 243 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal

conclusion as to whether a unit of CHZ, or a transaction in a unit of CHZ, is, or has ever been, a "security future" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of CHZ, or a transaction in a unit of CHZ is, or has ever been, a "security future" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 244

Admit that the SEC is not asserting in this action that a unit of CHZ, or a transaction in a unit of CHZ, is, or has ever been, a "security-based swap" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 244 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of CHZ, or a transaction in a unit of CHZ, is, or has ever been, a "security-based swap" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of CHZ, or a transaction in a unit of CHZ is, or has ever been, a "security-based swap" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 245

Admit that the SEC is not asserting in this action that a unit of CHZ, or a transaction in a unit of CHZ, is, or has ever been, a "bond" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 245 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of CHZ, or a transaction in a unit of CHZ, is, or has ever been, a "bond" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of CHZ, or a transaction in a unit of CHZ is, or has ever been, a "bond" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 246

Admit that the SEC is not asserting in this action that a unit of CHZ, or a transaction in a unit of CHZ, is, or has ever been, a "debenture" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 246 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of CHZ, or a transaction in a unit of CHZ, is, or has ever been, a "debenture" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of CHZ, or a transaction in a unit of CHZ is, or has ever been, a "debenture" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 247

Admit that the SEC is not asserting in this action that a unit of CHZ, or a transaction in a unit of CHZ, is, or has ever been, a "certificate of interest or participation in any profit-sharing agreement" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 247 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of CHZ, or a transaction in a unit of CHZ, is, or has ever been, a "certificate of interest or participation in any profit-sharing agreement" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of CHZ, or a transaction in a unit of CHZ is, or has ever been, a "certificate of interest or participation in any profit-sharing agreement" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 248

Admit that the SEC is not asserting in this action that a unit of CHZ, or a transaction in a unit of CHZ, is, or has ever been, a "collateral-trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 248 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and

other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of CHZ, or a transaction in a unit of CHZ, is, or has ever been, a "collateral-trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of CHZ, or a transaction in a unit of CHZ is, or has ever been, a "collateral-trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 249

Admit that the SEC is not asserting in this action that a unit of CHZ, or a transaction in a unit of CHZ, is, or has ever been, a "preorganization certificate or subscription" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 249 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of CHZ, or a transaction in a unit of CHZ, is, or has ever been, a "preorganization certificate or subscription" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of CHZ, or a transaction in a unit of CHZ is, or has ever been, a "preorganization certificate or subscription" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 250

Admit that the SEC is not asserting in this action that a unit of CHZ, or a transaction in a unit of CHZ, is, or has ever been, a "transferable share" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 250 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of CHZ, or a transaction in a unit of CHZ, is, or has ever been, a "transferable share" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of CHZ, or a transaction in a unit of CHZ is, or has ever been, a "transferable share" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 251

Admit that the SEC is not asserting in this action that a unit of CHZ, or a transaction in a unit of CHZ, is, or has ever been, a "voting trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 251 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of CHZ, or a transaction in a unit of CHZ, is, or has ever been, a "voting trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of CHZ, or a transaction in a unit of CHZ is, or has ever been, a "voting trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 252

Admit that the SEC is not asserting in this action that a unit of CHZ, or a transaction in a unit of CHZ, is, or has ever been, a "certificate of deposit for a security" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 252 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of CHZ, or a transaction in a unit of CHZ, is, or has ever been, a "certificate of deposit for a security" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of CHZ, or a transaction in a unit of CHZ is, or has ever been, a "certificate of deposit for a security" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 253

Admit that the SEC is not asserting in this action that a unit of CHZ, or a transaction in a unit of CHZ, is, or has ever been, a "put, call, straggle, option, or privilege entered into on a national securities exchange relating to foreign currency" as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 253 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and

other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of CHZ, or a transaction in a unit of CHZ, is, or has ever been, a "put, call, [straddle], option, or privilege entered into on a national securities exchange relating to foreign currency" as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of CHZ, or a transaction in a unit of CHZ is, or has ever been, a "put, call, [straddle], option, or privilege entered into on a national securities exchange relating to foreign currency" as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 254

Admit that the SEC is not asserting in this action that a unit of CHZ, or a transaction in a unit of CHZ, is, or has ever been, a "certificate of deposit" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 254 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of CHZ, or a transaction in a unit of CHZ, is, or has ever been, a "certificate of deposit" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of CHZ, or a transaction in a unit of CHZ is, or has ever been, a "certificate of deposit" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 255

Admit that the SEC is not asserting in this action that a unit of CHZ, or a transaction in a unit of CHZ, is, or has ever been, an "instrument commonly known as a 'security'" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 255 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of CHZ, or a transaction in a unit of CHZ, is, or has ever been, an "instrument commonly known as a 'security'" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of CHZ, or a transaction in a unit of CHZ is, or has ever been, an "instrument commonly known as a 'security'" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on

the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 256

Admit that the SEC is not asserting in this action that a unit of CHZ, or a transaction in a unit of CHZ, is, or has ever been, a "certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase" any of the various terms described above in Request Nos. 240 through 255, as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 256 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of CHZ, or a transaction in a unit of CHZ, is, or has ever been, a "certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase" any of the various terms described above in Request Nos. 240 through 255, as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of CHZ, or a transaction in a unit of CHZ is, or has ever been, a "certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase" any of the various terms described above in Request Nos. 240 through 255, as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 257

Admit that the SEC is not asserting in this action that a unit of FLOW, or a transaction in a unit of FLOW, is, or has ever been, a "note" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 257 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of FLOW, or a transaction in a unit of FLOW, is, or has ever been, a "note" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of FLOW, or a transaction in a unit of FLOW is, or has ever been, a "note" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 258

Admit that the SEC is not asserting in this action that a unit of FLOW, or a transaction in a unit of FLOW, is, or has ever been, a "stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 258 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of FLOW, or a transaction in a unit of FLOW, is, or has ever been, a "stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of FLOW, or a transaction in a unit of FLOW is, or has ever been, a "stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 259

Admit that the SEC is not asserting in this action that a unit of FLOW, or a transaction in a unit of FLOW, is, or has ever been, a "treasury stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 259 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of FLOW, or a transaction in a unit of FLOW, is, or has ever been, a "treasury stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of FLOW, or a transaction in a unit of FLOW is, or has ever been, a "treasury stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 260

Admit that the SEC is not asserting in this action that a unit of FLOW, or a transaction in a unit of FLOW, is, or has ever been, a "security future" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 260 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal

conclusion as to whether a unit of FLOW, or a transaction in a unit of FLOW, is, or has ever been, a "security future" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of FLOW, or a transaction in a unit of FLOW is, or has ever been, a "security future" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 261

Admit that the SEC is not asserting in this action that a unit of FLOW, or a transaction in a unit of FLOW, is, or has ever been, a "security-based swap" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 261 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of FLOW, or a transaction in a unit of FLOW, is, or has ever been, a "security-based swap" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of FLOW, or a transaction in a unit of FLOW is, or has ever been, a "security-based swap" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 262

Admit that the SEC is not asserting in this action that a unit of FLOW, or a transaction in a unit of FLOW, is, or has ever been, a "bond" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 262 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of FLOW, or a transaction in a unit of FLOW, is, or has ever been, a "bond" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of FLOW, or a transaction in a unit of FLOW is, or has ever been, a "bond" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 263

Admit that the SEC is not asserting in this action that a unit of FLOW, or a transaction in a unit of FLOW, is, or has ever been, a "debenture" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 263 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of FLOW, or a transaction in a unit of FLOW, is, or has ever been, a "debenture" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of FLOW, or a transaction in a unit of FLOW is, or has ever been, a "debenture" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 264

Admit that the SEC is not asserting in this action that a unit of FLOW, or a transaction in a unit of FLOW, is, or has ever been, a "certificate of interest or participation in any profit-sharing agreement" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 264 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of FLOW, or a transaction in a unit of FLOW, is, or has ever been, a "certificate of interest or participation in any profit-sharing agreement" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of FLOW, or a transaction in a unit of FLOW is, or has ever been, a "certificate of interest or participation in any profit-sharing agreement" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 265

Admit that the SEC is not asserting in this action that a unit of FLOW, or a transaction in a unit of FLOW, is, or has ever been, a "collateral-trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 265 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a

defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of FLOW, or a transaction in a unit of FLOW, is, or has ever been, a "collateral-trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of FLOW, or a transaction in a unit of FLOW is, or has ever been, a "collateral-trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 266

Admit that the SEC is not asserting in this action that a unit of FLOW, or a transaction in a unit of FLOW, is, or has ever been, a "preorganization certificate or subscription" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 266 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of FLOW, or a transaction in a unit of FLOW, is, or has ever been, a "preorganization certificate or subscription" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of FLOW, or a transaction in a unit of FLOW is, or has ever been, a "preorganization certificate or subscription" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 267

Admit that the SEC is not asserting in this action that a unit of FLOW, or a transaction in a unit of FLOW, is, or has ever been, a "transferable share" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 267 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of FLOW, or a transaction in a unit of FLOW, is, or has ever been, a "transferable share" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of FLOW, or a transaction in a unit of FLOW is, or has ever been, a "transferable share" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances

that surround its offer and sale. Otherwise, denies.

Request for Admission No. 268

Admit that the SEC is not asserting in this action that a unit of FLOW, or a transaction in a unit of FLOW, is, or has ever been, a "voting trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 268 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of FLOW, or a transaction in a unit of FLOW, is, or has ever been, a "voting trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of FLOW, or a transaction in a unit of FLOW is, or has ever been, a "voting trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 269

Admit that the SEC is not asserting in this action that a unit of FLOW, or a transaction in a unit of FLOW, is, or has ever been, a "certificate of deposit for a security" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 269 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of FLOW, or a transaction in a unit of FLOW, is, or has ever been, a "certificate of deposit for a security" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of FLOW, or a transaction in a unit of FLOW is, or has ever been, a "certificate of deposit for a security" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 270

Admit that the SEC is not asserting in this action that a unit of FLOW, or a transaction in a unit of FLOW, is, or has ever been, a "put, call, straggle, option, or privilege entered into on a national securities exchange relating to foreign currency" as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 270 because it is not relevant to any parties'

claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of FLOW, or a transaction in a unit of FLOW, is, or has ever been, a "put, call, [straddle], option, or privilege entered into on a national securities exchange relating to foreign currency" as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of FLOW, or a transaction in a unit of FLOW is, or has ever been, a "put, call, [straddle], option, or privilege entered into on a national securities exchange relating to foreign currency" as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 271

Admit that the SEC is not asserting in this action that a unit of FLOW, or a transaction in a unit of FLOW, is, or has ever been, a "certificate of deposit" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 271 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of FLOW, or a transaction in a unit of FLOW, is, or has ever been, a "certificate of deposit" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of FLOW, or a transaction in a unit of FLOW is, or has ever been, a "certificate of deposit" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 272

Admit that the SEC is not asserting in this action that a unit of FLOW, or a transaction in a unit of FLOW, is, or has ever been, an "instrument commonly known as a 'security'" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 272 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of FLOW, or a transaction in a unit of FLOW, is, or has ever been, an "instrument commonly known as a 'security'" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of FLOW, or a transaction in a unit of FLOW is, or has ever been, an "instrument commonly known as a 'security'" as that term is used

in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 273

Admit that the SEC is not asserting in this action that a unit of FLOW, or a transaction in a unit of FLOW, is, or has ever been, a "certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase" any of the various terms described above in Request Nos. 257 through 272, as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 273 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of FLOW, or a transaction in a unit of FLOW, is, or has ever been, a "certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase" any of the various terms described above in Request Nos. 257 through 272, as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of FLOW, or a transaction in a unit of FLOW is, or has ever been, a "certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase" any of the various terms described above in Request Nos. 257 through 272, as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 274

Admit that the SEC is not asserting in this action that a unit of ICP, or a transaction in a unit of ICP, is, or has ever been, a "note" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 274 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of ICP, or a transaction in a unit of ICP, is, or has ever been, a "note" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of ICP, or a transaction in a unit of ICP is, or has ever been, a "note" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 275

Admit that the SEC is not asserting in this action that a unit of ICP, or a transaction in a unit of ICP, is, or has ever been, a "stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 275 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of ICP, or a transaction in a unit of ICP, is, or has ever been, a "stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of ICP, or a transaction in a unit of ICP is, or has ever been, a "stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 276

Admit that the SEC is not asserting in this action that a unit of ICP, or a transaction in a unit of ICP, is, or has ever been, a "treasury stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 276 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of ICP, or a transaction in a unit of ICP, is, or has ever been, a "treasury stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of ICP, or a transaction in a unit of ICP is, or has ever been, a "treasury stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 277

Admit that the SEC is not asserting in this action that a unit of ICP, or a transaction in a unit of ICP, is, or has ever been, a "security future" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 277 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal

conclusion as to whether a unit of ICP, or a transaction in a unit of ICP, is, or has ever been, a "security future" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of ICP, or a transaction in a unit of ICP is, or has ever been, a "security future" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 278

Admit that the SEC is not asserting in this action that a unit of ICP, or a transaction in a unit of ICP, is, or has ever been, a "security-based swap" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 278 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of ICP, or a transaction in a unit of ICP, is, or has ever been, a "security-based swap" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of ICP, or a transaction in a unit of ICP is, or has ever been, a "security-based swap" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 279

Admit that the SEC is not asserting in this action that a unit of ICP, or a transaction in a unit of ICP, is, or has ever been, a "bond" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 279 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of ICP, or a transaction in a unit of ICP, is, or has ever been, a "bond" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of ICP, or a transaction in a unit of ICP is, or has ever been, a "bond" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 280

Admit that the SEC is not asserting in this action that a unit of ICP, or a transaction in a unit of ICP, is, or has ever been, a "debenture" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 280 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of ICP, or a transaction in a unit of ICP, is, or has ever been, a "debenture" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of ICP, or a transaction in a unit of ICP is, or has ever been, a "debenture" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 281

Admit that the SEC is not asserting in this action that a unit of ICP, or a transaction in a unit of ICP, is, or has ever been, a "certificate of interest or participation in any profit-sharing agreement" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 281 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of ICP, or a transaction in a unit of ICP, is, or has ever been, a "certificate of interest or participation in any profit-sharing agreement" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of ICP, or a transaction in a unit of ICP is, or has ever been, a "certificate of interest or participation in any profit-sharing agreement" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 282

Admit that the SEC is not asserting in this action that a unit of ICP, or a transaction in a unit of ICP, is, or has ever been, a "collateral-trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 282 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and

other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of ICP, or a transaction in a unit of ICP, is, or has ever been, a "collateral-trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of ICP, or a transaction in a unit of ICP is, or has ever been, a "collateral-trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 283

Admit that the SEC is not asserting in this action that a unit of ICP, or a transaction in a unit of ICP, is, or has ever been, a "preorganization certificate or subscription" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 283 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of ICP, or a transaction in a unit of ICP, is, or has ever been, a "preorganization certificate or subscription" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of ICP, or a transaction in a unit of ICP is, or has ever been, a "preorganization certificate or subscription" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 284

Admit that the SEC is not asserting in this action that a unit of ICP, or a transaction in a unit of ICP, is, or has ever been, a "transferable share" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 284 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of ICP, or a transaction in a unit of ICP, is, or has ever been, a "transferable share" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of ICP, or a transaction in a unit of ICP is, or has ever been, a "transferable share" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 285

Admit that the SEC is not asserting in this action that a unit of ICP, or a transaction in a unit of ICP, is, or has ever been, a "voting trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 285 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of ICP, or a transaction in a unit of ICP, is, or has ever been, a "voting trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of ICP, or a transaction in a unit of ICP is, or has ever been, a "voting trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 286

Admit that the SEC is not asserting in this action that a unit of ICP, or a transaction in a unit of ICP, is, or has ever been, a "certificate of deposit for a security" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 286 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of ICP, or a transaction in a unit of ICP, is, or has ever been, a "certificate of deposit for a security" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of ICP, or a transaction in a unit of ICP is, or has ever been, a "certificate of deposit for a security" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 295

Admit that the SEC is not asserting in this action that a unit of ICP, or a transaction in a unit of ICP, is, or has ever been, a "put, call, straggle, option, or privilege entered into on a national securities exchange relating to foreign currency" as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 295 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and

other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of ICP, or a transaction in a unit of ICP, is, or has ever been, a "put, call, [straddle], option, or privilege entered into on a national securities exchange relating to foreign currency" as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of ICP, or a transaction in a unit of ICP is, or has ever been, a "put, call, [straddle], option, or privilege entered into on a national securities exchange relating to foreign currency" as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 288

Admit that the SEC is not asserting in this action that a unit of ICP, or a transaction in a unit of ICP, is, or has ever been, a "certificate of deposit" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 288 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of ICP, or a transaction in a unit of ICP, is, or has ever been, a "certificate of deposit" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of ICP, or a transaction in a unit of ICP is, or has ever been, a "certificate of deposit" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 289

Admit that the SEC is not asserting in this action that a unit of ICP, or a transaction in a unit of ICP, is, or has ever been, an "instrument commonly known as a 'security'" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 289 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of ICP, or a transaction in a unit of ICP, is, or has ever been, an "instrument commonly known as a 'security'" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of ICP, or a transaction in a unit of ICP is, or has ever been, an "instrument commonly known as a 'security'" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on

the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 290

Admit that the SEC is not asserting in this action that a unit of ICP, or a transaction in a unit of ICP, is, or has ever been, a "certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase" any of the various terms described above in Request Nos. 274 through 289, as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 290 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of ICP, or a transaction in a unit of ICP, is, or has ever been, a "certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase" any of the various terms described above in Request Nos. 274 through 289, as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of ICP, or a transaction in a unit of ICP is, or has ever been, a "certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase" any of the various terms described above in Request Nos. 274 through 289, as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 291

Admit that the SEC is not asserting in this action that a unit of NEAR, or a transaction in a unit of NEAR, is, or has ever been, a "note" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 291 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of NEAR, or a transaction in a unit of NEAR, is, or has ever been, a "note" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of NEAR, or a transaction in a unit of NEAR is, or has ever been, a "note" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 292

Admit that the SEC is not asserting in this action that a unit of NEAR, or a transaction in a unit of NEAR, is, or has ever been, a "stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 292 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of NEAR, or a transaction in a unit of NEAR, is, or has ever been, a "stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of NEAR, or a transaction in a unit of NEAR is, or has ever been, a "stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 293

Admit that the SEC is not asserting in this action that a unit of NEAR, or a transaction in a unit of NEAR, is, or has ever been, a "treasury stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 293 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of NEAR, or a transaction in a unit of NEAR, is, or has ever been, a "treasury stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of NEAR, or a transaction in a unit of NEAR is, or has ever been, a "treasury stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 294

Admit that the SEC is not asserting in this action that a unit of NEAR, or a transaction in a unit of NEAR, is, or has ever been, a "security future" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 294 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal

conclusion as to whether a unit of NEAR, or a transaction in a unit of NEAR, is, or has ever been, a "security future" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of NEAR, or a transaction in a unit of NEAR is, or has ever been, a "security future" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 295

Admit that the SEC is not asserting in this action that a unit of NEAR, or a transaction in a unit of NEAR, is, or has ever been, a "security-based swap" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 295 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of NEAR, or a transaction in a unit of NEAR, is, or has ever been, a "security-based swap" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of NEAR, or a transaction in a unit of NEAR is, or has ever been, a "security-based swap" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 296

Admit that the SEC is not asserting in this action that a unit of NEAR, or a transaction in a unit of NEAR, is, or has ever been, a "bond" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 296 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of NEAR, or a transaction in a unit of NEAR, is, or has ever been, a "bond" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of NEAR, or a transaction in a unit of NEAR is, or has ever been, a "bond" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 297

Admit that the SEC is not asserting in this action that a unit of NEAR, or a transaction in a unit of NEAR, is, or has ever been, a "debenture" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 297 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of NEAR, or a transaction in a unit of NEAR, is, or has ever been, a "debenture" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of NEAR, or a transaction in a unit of NEAR is, or has ever been, a "debenture" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 298

Admit that the SEC is not asserting in this action that a unit of NEAR, or a transaction in a unit of NEAR, is, or has ever been, a "certificate of interest or participation in any profit- sharing agreement" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 298 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of NEAR, or a transaction in a unit of NEAR, is, or has ever been, a "certificate of interest or participation in any profit- sharing agreement" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of NEAR, or a transaction in a unit of NEAR is, or has ever been, a "certificate of interest or participation in any profit- sharing agreement" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 299

Admit that the SEC is not asserting in this action that a unit of NEAR, or a transaction in a unit of NEAR, is, or has ever been, a "collateral-trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 299 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a

defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of NEAR, or a transaction in a unit of NEAR, is, or has ever been, a "collateral-trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of NEAR, or a transaction in a unit of NEAR is, or has ever been, a "collateral-trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 300

Admit that the SEC is not asserting in this action that a unit of NEAR, or a transaction in a unit of NEAR, is, or has ever been, a "preorganization certificate or subscription" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 300 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of NEAR, or a transaction in a unit of NEAR, is, or has ever been, a "preorganization certificate or subscription" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of NEAR, or a transaction in a unit of NEAR is, or has ever been, a "preorganization certificate or subscription" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 301

Admit that the SEC is not asserting in this action that a unit of NEAR, or a transaction in a unit of NEAR, is, or has ever been, a "transferable share" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 301 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of NEAR, or a transaction in a unit of NEAR, is, or has ever been, a "transferable share" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of NEAR, or a transaction in a unit of NEAR is, or has ever been, a "transferable share" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances

that surround its offer and sale. Otherwise, denies.

Request for Admission No. 302

Admit that the SEC is not asserting in this action that a unit of NEAR, or a transaction in a unit of NEAR, is, or has ever been, a "voting trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 302 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of NEAR, or a transaction in a unit of NEAR, is, or has ever been, a "voting trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of NEAR, or a transaction in a unit of NEAR is, or has ever been, a "voting trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 303

Admit that the SEC is not asserting in this action that a unit of NEAR, or a transaction in a unit of NEAR, is, or has ever been, a "certificate of deposit for a security" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 303 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of NEAR, or a transaction in a unit of NEAR, is, or has ever been, a "certificate of deposit for a security" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of NEAR, or a transaction in a unit of NEAR is, or has ever been, a "certificate of deposit for a security" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 304

Admit that the SEC is not asserting in this action that a unit of NEAR, or a transaction in a unit of NEAR, is, or has ever been, a "put, call, straggle, option, or privilege entered into on a national securities exchange relating to foreign currency" as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 304 because it is not relevant to any parties'

claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of NEAR, or a transaction in a unit of NEAR, is, or has ever been, a "put, call, [straddle], option, or privilege entered into on a national securities exchange relating to foreign currency" as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of NEAR, or a transaction in a unit of NEAR is, or has ever been, a "put, call, [straddle], option, or privilege entered into on a national securities exchange relating to foreign currency" as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 305

Admit that the SEC is not asserting in this action that a unit of NEAR, or a transaction in a unit of NEAR, is, or has ever been, a "certificate of deposit" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 305 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of NEAR, or a transaction in a unit of NEAR, is, or has ever been, a "certificate of deposit" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of NEAR, or a transaction in a unit of NEAR is, or has ever been, a "certificate of deposit" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 306

Admit that the SEC is not asserting in this action that a unit of NEAR, or a transaction in a unit of NEAR, is, or has ever been, an "instrument commonly known as a 'security'" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 306 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of NEAR, or a transaction in a unit of NEAR, is, or has ever been, an "instrument commonly known as a 'security'" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of NEAR, or a transaction in a unit of NEAR is, or has ever been, an "instrument commonly known as a 'security'" as that term is used

in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 307

Admit that the SEC is not asserting in this action that a unit of NEAR, or a transaction in a unit of NEAR, is, or has ever been, a "certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase" any of the various terms described above in Request Nos. 291 through 306, as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 307 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of NEAR, or a transaction in a unit of NEAR, is, or has ever been, a "certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase" any of the various terms described above in Request Nos. 291 through 306, as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of NEAR, or a transaction in a unit of NEAR is, or has ever been, a "certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase" any of the various terms described above in Request Nos. 291 through 306, as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 308

Admit that the SEC is not asserting in this action that a unit of VGX, or a transaction in a unit of VGX, is, or has ever been, a "note" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 308 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of VGX, or a transaction in a unit of VGX, is, or has ever been, a "note" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of VGX, or a transaction in a unit of VGX is, or has ever been, a "note" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 309

Admit that the SEC is not asserting in this action that a unit of VGX, or a transaction in a unit of VGX, is, or has ever been, a "stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 309 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of VGX, or a transaction in a unit of VGX, is, or has ever been, a "stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of VGX, or a transaction in a unit of VGX is, or has ever been, a "stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 310

Admit that the SEC is not asserting in this action that a unit of VGX, or a transaction in a unit of VGX, is, or has ever been, a "treasury stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 310 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of VGX, or a transaction in a unit of VGX, is, or has ever been, a "treasury stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of VGX, or a transaction in a unit of VGX is, or has ever been, a "treasury stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 311

Admit that the SEC is not asserting in this action that a unit of VGX, or a transaction in a unit of VGX, is, or has ever been, a "security future" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 311 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal

conclusion as to whether a unit of VGX, or a transaction in a unit of VGX, is, or has ever been, a "security future" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of VGX, or a transaction in a unit of VGX is, or has ever been, a "security future" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 312

Admit that the SEC is not asserting in this action that a unit of VGX, or a transaction in a unit of VGX, is, or has ever been, a "security-based swap" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 312 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of VGX, or a transaction in a unit of VGX, is, or has ever been, a "security-based swap" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of VGX, or a transaction in a unit of VGX is, or has ever been, a "security-based swap" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 313

Admit that the SEC is not asserting in this action that a unit of VGX, or a transaction in a unit of VGX, is, or has ever been, a "bond" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 313 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of VGX, or a transaction in a unit of VGX, is, or has ever been, a "bond" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of VGX, or a transaction in a unit of VGX is, or has ever been, a "bond" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 314

Admit that the SEC is not asserting in this action that a unit of VGX, or a transaction in a unit of VGX, is, or has ever been, a "debenture" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 314 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of VGX, or a transaction in a unit of VGX, is, or has ever been, a "debenture" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of VGX, or a transaction in a unit of VGX is, or has ever been, a "debenture" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 315

Admit that the SEC is not asserting in this action that a unit of VGX, or a transaction in a unit of VGX, is, or has ever been, a "certificate of interest or participation in any profit-sharing agreement" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 315 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of VGX, or a transaction in a unit of VGX, is, or has ever been, a "certificate of interest or participation in any profit-sharing agreement" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of VGX, or a transaction in a unit of VGX is, or has ever been, a "certificate of interest or participation in any profit-sharing agreement" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 316

Admit that the SEC is not asserting in this action that a unit of VGX, or a transaction in a unit of VGX, is, or has ever been, a "collateral-trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 316 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and

other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of VGX, or a transaction in a unit of VGX, is, or has ever been, a "collateral-trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of VGX, or a transaction in a unit of VGX is, or has ever been, a "collateral-trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 317

Admit that the SEC is not asserting in this action that a unit of VGX, or a transaction in a unit of VGX, is, or has ever been, a "preorganization certificate or subscription" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 317 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of VGX, or a transaction in a unit of VGX, is, or has ever been, a "preorganization certificate or subscription" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of VGX, or a transaction in a unit of VGX is, or has ever been, a "preorganization certificate or subscription" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 318

Admit that the SEC is not asserting in this action that a unit of VGX, or a transaction in a unit of VGX, is, or has ever been, a "transferable share" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 318 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of VGX, or a transaction in a unit of VGX, is, or has ever been, a "transferable share" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of VGX, or a transaction in a unit of VGX is, or has ever been, a "transferable share" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 319

Admit that the SEC is not asserting in this action that a unit of VGX, or a transaction in a unit of VGX, is, or has ever been, a "voting trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 319 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of VGX, or a transaction in a unit of VGX, is, or has ever been, a "voting trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of VGX, or a transaction in a unit of VGX is, or has ever been, a "voting trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 320

Admit that the SEC is not asserting in this action that a unit of VGX, or a transaction in a unit of VGX, is, or has ever been, a "certificate of deposit for a security" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 320 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of VGX, or a transaction in a unit of VGX, is, or has ever been, a "certificate of deposit for a security" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of VGX, or a transaction in a unit of VGX is, or has ever been, a "certificate of deposit for a security" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 321

Admit that the SEC is not asserting in this action that a unit of VGX, or a transaction in a unit of VGX, is, or has ever been, a "put, call, straggle, option, or privilege entered into on a national securities exchange relating to foreign currency" as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 321 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and

other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of VGX, or a transaction in a unit of VGX, is, or has ever been, a "put, call, [straddle], option, or privilege entered into on a national securities exchange relating to foreign currency" as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of VGX, or a transaction in a unit of VGX is, or has ever been, a "put, call, [straddle], option, or privilege entered into on a national securities exchange relating to foreign currency" as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 322

Admit that the SEC is not asserting in this action that a unit of VGX, or a transaction in a unit of VGX, is, or has ever been, a "certificate of deposit" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 322 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of VGX, or a transaction in a unit of VGX, is, or has ever been, a "certificate of deposit" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of VGX, or a transaction in a unit of VGX is, or has ever been, a "certificate of deposit" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 323

Admit that the SEC is not asserting in this action that a unit of VGX, or a transaction in a unit of VGX, is, or has ever been, an "instrument commonly known as a 'security'" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 323 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of VGX, or a transaction in a unit of VGX, is, or has ever been, an "instrument commonly known as a 'security'" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of VGX, or a transaction in a unit of VGX is, or has ever been, an "instrument commonly known as a 'security'" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on

the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 324

Admit that the SEC is not asserting in this action that a unit of VGX, or a transaction in a unit of VGX, is, or has ever been, a "certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase" any of the various terms described above in Request Nos. 308 through 323, as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 324 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of VGX, or a transaction in a unit of VGX, is, or has ever been, a "certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase" any of the various terms described above in Request Nos. 308 through 323, as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of VGX, or a transaction in a unit of VGX is, or has ever been, a "certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase" any of the various terms described above in Request Nos. 308 through 323, as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 325

Admit that the SEC is not asserting in this action that a unit of DASH, or a transaction in a unit of DASH, is, or has ever been, a "note" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 325 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of DASH, or a transaction in a unit of DASH, is, or has ever been, a "note" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of DASH, or a transaction in a unit of DASH is, or has ever been, a "note" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 326

Admit that the SEC is not asserting in this action that a unit of DASH, or a transaction in a unit of DASH, is, or has ever been, a "stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 326 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of DASH, or a transaction in a unit of DASH, is, or has ever been, a "stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of DASH, or a transaction in a unit of DASH is, or has ever been, a "stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 327

Admit that the SEC is not asserting in this action that a unit of DASH, or a transaction in a unit of DASH, is, or has ever been, a "treasury stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 327 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of DASH, or a transaction in a unit of DASH, is, or has ever been, a "treasury stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of DASH, or a transaction in a unit of DASH is, or has ever been, a "treasury stock" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 328

Admit that the SEC is not asserting in this action that a unit of DASH, or a transaction in a unit of DASH, is, or has ever been, a "security future" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 328 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal

conclusion as to whether a unit of DASH, or a transaction in a unit of DASH, is, or has ever been, a "security future" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of DASH, or a transaction in a unit of DASH is, or has ever been, a "security future" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 329

Admit that the SEC is not asserting in this action that a unit of DASH, or a transaction in a unit of DASH, is, or has ever been, a "security-based swap" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 329 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of DASH, or a transaction in a unit of DASH, is, or has ever been, a "security-based swap" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of DASH, or a transaction in a unit of DASH is, or has ever been, a "security-based swap" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 330

Admit that the SEC is not asserting in this action that a unit of DASH, or a transaction in a unit of DASH, is, or has ever been, a "bond" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 330 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of DASH, or a transaction in a unit of DASH, is, or has ever been, a "bond" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of DASH, or a transaction in a unit of DASH is, or has ever been, a "bond" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 331

Admit that the SEC is not asserting in this action that a unit of DASH, or a transaction in a unit of DASH, is, or has ever been, a "debenture" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 331 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of DASH, or a transaction in a unit of DASH, is, or has ever been, a "debenture" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of DASH, or a transaction in a unit of DASH is, or has ever been, a "debenture" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 332

Admit that the SEC is not asserting in this action that a unit of DASH, or a transaction in a unit of DASH, is, or has ever been, a "certificate of interest or participation in any profit- sharing agreement" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 332 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of DASH, or a transaction in a unit of DASH, is, or has ever been, a "certificate of interest or participation in any profit- sharing agreement" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of DASH, or a transaction in a unit of DASH is, or has ever been, a "certificate of interest or participation in any profit- sharing agreement" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 333

Admit that the SEC is not asserting in this action that a unit of DASH, or a transaction in a unit of DASH, is, or has ever been, a "collateral-trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 333 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a

defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of DASH, or a transaction in a unit of DASH, is, or has ever been, a "collateral-trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of DASH, or a transaction in a unit of DASH is, or has ever been, a "collateral-trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 334

Admit that the SEC is not asserting in this action that a unit of DASH, or a transaction in a unit of DASH, is, or has ever been, a "preorganization certificate or subscription" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 334 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of DASH, or a transaction in a unit of DASH, is, or has ever been, a "preorganization certificate or subscription" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of DASH, or a transaction in a unit of DASH is, or has ever been, a "preorganization certificate or subscription" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 335

Admit that the SEC is not asserting in this action that a unit of DASH, or a transaction in a unit of DASH, is, or has ever been, a "transferable share" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 335 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of DASH, or a transaction in a unit of DASH, is, or has ever been, a "transferable share" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of DASH, or a transaction in a unit of DASH is, or has ever been, a "transferable share" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances

that surround its offer and sale. Otherwise, denies.

Request for Admission No. 336

Admit that the SEC is not asserting in this action that a unit of DASH, or a transaction in a unit of DASH, is, or has ever been, a "voting trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 336 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of DASH, or a transaction in a unit of DASH, is, or has ever been, a "voting trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of DASH, or a transaction in a unit of DASH is, or has ever been, a "voting trust certificate" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 337

Admit that the SEC is not asserting in this action that a unit of DASH, or a transaction in a unit of DASH, is, or has ever been, a "certificate of deposit for a security" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 337 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of DASH, or a transaction in a unit of DASH, is, or has ever been, a "certificate of deposit for a security" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of DASH, or a transaction in a unit of DASH is, or has ever been, a "certificate of deposit for a security" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 338

Admit that the SEC is not asserting in this action that a unit of DASH, or a transaction in a unit of DASH, is, or has ever been, a "put, call, straggle, option, or privilege entered into on a national securities exchange relating to foreign currency" as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 338 because it is not relevant to any parties'

claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of DASH, or a transaction in a unit of DASH, is, or has ever been, a "put, call, [straddle], option, or privilege entered into on a national securities exchange relating to foreign currency" as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of DASH, or a transaction in a unit of DASH is, or has ever been, a "put, call, [straddle], option, or privilege entered into on a national securities exchange relating to foreign currency" as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 339

Admit that the SEC is not asserting in this action that a unit of DASH, or a transaction in a unit of DASH, is, or has ever been, a "certificate of deposit" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 339 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of DASH, or a transaction in a unit of DASH, is, or has ever been, a "certificate of deposit" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of DASH, or a transaction in a unit of DASH is, or has ever been, a "certificate of deposit" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 340

Admit that the SEC is not asserting in this action that a unit of DASH, or a transaction in a unit of DASH, is, or has ever been, an "instrument commonly known as a 'security'" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 340 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of DASH, or a transaction in a unit of DASH, is, or has ever been, an "instrument commonly known as a 'security'" as that term is used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of DASH, or a transaction in a unit of DASH is, or has ever been, an "instrument commonly known as a 'security'" as that term is used

in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Request for Admission No. 341

Admit that the SEC is not asserting in this action that a unit of DASH, or a transaction in a unit of DASH, is, or has ever been, a "certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase" any of the various terms described above in Request Nos. 325 through 340, as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

Answer: The Commission objects to Request No. 341 because it is not relevant to any parties' claims or defenses in this Action or to the extent Coinbase asserts that this Request is relevant to a defense that is not cognizable in this Commission enforcement action, such as Coinbase's estoppel and other equitable defenses. The Commission further objects to the extent that the Request calls for a legal conclusion as to whether a unit of DASH, or a transaction in a unit of DASH, is, or has ever been, a "certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase" any of the various terms described above in Request Nos. 325 through 340, as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). Subject to and without waiving its objections, the Commission admits that the Commission is not asserting in this Action that a unit of DASH, or a transaction in a unit of DASH is, or has ever been, a "certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase" any of the various terms described above in Request Nos. 325 through 340, as those terms are used in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10). The Commission avers that whether a particular instrument meets the definition of "Security" under the Exchange Act depends on the economic reality and all the facts and circumstances that surround its offer and sale. Otherwise, denies.

Dated: July 22, 2024
New York, New York

s/ Peter A. Mancuso

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CERTIFICATE OF SERVICE

I certify that on July 22, 2024, I caused the foregoing Plaintiff's Responses and Objections to Defendants' First Set of Requests for Admission to be served by electronic mail on Defendants' counsel at the following addresses:

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s/ Peter A. Mancuso
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