Twitter Thread by Scott Chamberlain



Scott Chamberlain
@scotty2ten

Read the SEC Complaint against Ripple. It's bad for XRP and for all crypto, except BTC. It's bad for XRP because it alleges all XRP are *at this very moment* securities in the US, not just the XRP Ripple allegedly bundled into an investment contract. 1/n

Ironically, that would mean XRP can't be used by anyone for any purpose *other than* speculation on Ripple's success in the US. Go figure. The XRPL is a fully functioning network. I've used it to send value between exchanges to cash out in AUD through an ODL exchange partner. 2/n

It takes all of 30 seconds for the money to arrive in my bank account. It is a wondrous experience. At no time did I think I was purchasing a speculative investment product. Yet the SEC alleges that is exactly what I did. 3/n

To the SEC, all holders and sellers of XRP are holding and selling an investment contract issued by Ripple. This shows how useless their previous guidance has been. Here, a digital asset on a fully mature network is a security for everyone because… well, just because… 4/n

This case probably can't settle. If XRP is a security it can't comply with security laws *and* be used for any purpose by anybody except for speculative financial gain at the hands of the company that can't use it to generate value for anybody because its a security. Nuts. 5/n

So, catch 22. For XRP to move value it must have value. The more value the better. That self-evident fact becomes an expectation that Ripple's efforts will increase the price because using it and making it valuable are the same thing. 6/n

The XRP Community has long debated the chicken/egg nature of XRP use vs price. The SEC answer is neither the chicken nor the egg should exist. There's only an unregistered duck. Hand your money to the shorts… (proving not all users expect profit from Ripple's endeavours) 7/n

It is bad for crypto because it introduces a wholly new unspecified standard for treating a native token of a functioning network as a security based upon the use made of that token by one member of the ecosystem. 8/n

Most projects sell tokens in functioning networks to fund ecosystem activities. There appears no reason why these entities are not also selling securities in the SEC's view. Especially if there is initial VC investment, IMHO. Why invest except in expectation "number go up". 9/n

The complaint is loaded with allegations about behaviour that is unlawful in respect of securities, but light-on about why all XRP are securities. Sure, there is information asymmetry. But information asymmetry alone shouldn't create an investment contract relationship…10/n

The complaint is actually very hand-wavy on the key legal issues that everyone will want resolved. The two key ones are nature of the "investment contact" relationship and the definition of the "common enterprise". 11/n

Relationship: Everyone says Howey has four tests, but really there are five. 1) Contract arrangement or scheme 2) investment of money 3) in a common enterprise; 4) with expectation of profit; 5) through the efforts of others. 11a/n

Everyone overlooks 1) because until blockchain there was always a counterparty. But in decentralised networks, who is the counterparty? What is the nature of that relationship that gives rise to an investment contract? All crypto needs to know. 12/n

When does owning a token on the same network give rise to a contract, arrangement, or scheme between two strangers, one of whom is trying to make valuable use of the token, and the other of whom just happens to believe they will succeed? 13/n

Common Enterprise: The second, related problem, is what is the common enterprise? Is it Ripple's business? The XRPL? Are validators included? What degree of decentralisation is necessary for the code-enforced collaboration between strangers to not be a common enterprise? 14/n

The wake up call for crypto is that having a fully functioning network is no protection. Every chain with a Foundation with a genesis stash of tokens to raise funds to develop/give value to the network is at risk. The SEC guidance is less than worthless, excluding BTC. 15/n

The wake up call for the XRP Community is that Ripple's efforts may have been less successful than assumed. The lack of regulatory clarity in the US has been crippling. There has been no real price discovery for xrp. Almost everything you see is speculation, not adoption. 16/n

My bet is this will be a long and existential battle, absent legislative intervention. I don't see the path to compliance that would involve a wrist slap and a clean launch pad for the future. The security designation is a killshot, not an inoculation. 17/end