Twitter Thread by John E Deaton



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RIPPLE RESPONDS

I've been asked to provide my thoughts on @Ripple's Answer. I quickly looked over the Answer late last night. It's 93 pages and I spent less than hour reading it over so please take that into consideration. I plan to review it in much more detail in the coming

days and will likely revisit these initial thoughts. Before I provide any thoughts, I should warn you that if you ask 3 different attorneys to respond, you are likely to get 3 different opinions. Also, I always provide my honest assessment even if it's not what I know people want

to hear. Personally, I was disappointed in the Answer. My disappointment means nothing and has no impact on the issues. In fact, if this case is going to trial, I would have advised Ripple to Answer the Complaint much like it did. My disappointment isn't a reflection regarding

the skill of Ripple's trial lawyers or in-house counsel @s_alderoty or regarding the merits of the defense. Ripple's lawyers know much more than I do with respect to securities' laws. I'm disappointed because, after reading the Answer, I'm less confident that a settlement will

transpire within the next 6-9 months. Instead, it looks like it may be a very long legal battle ahead. There are two ways to write pleadings in Court. One way is what's called Notice Pleading. All you have to do is to provide the minimum amount of information necessary to provide

adequate notice of the charges or the defenses. The second approach is what's called Fact Pleading or Evidence Pleading. With fact pleading, you provide, not all, but a lot of the evidence you intend to rely on to support the charges or the defenses. For example, Ripple's Second

Affirmative Defense is that XRP is not a security or investment contract. Except for a few sentences in the Answer, Ripple doesn't allude to the many examples of use cases demonstrating that XRP is, in fact, not a security. For instance, it doesn't list how XRP is being used as a

payroll currency in Japan and elsewhere. Ripple, however, was under no obligation to do so at this stage because all that's required in Federal Court is to provide "notice" of your claims and defenses. It's not required to plead some of the evidence that you will rely on at

trial. I thought it might be possible that Ripple front-loaded the evidence in an effort to drive home the absurdity of calling Today's XRP a security. Strategically, Ripple decided not to go this route. My speculation is that Ripple knew that it wouldn't make any difference to

the SEC based on their negotiations and decided to strategically hold information and evidence back to unleash at a more appropriate time later. In short, why show your hand until you're required to do so? No need to give your opponent a heads up on your strategy and arguments.

This is usually the best strategy to employ when you realize that your case is likely going the distance. There is no doubt that some of the XRP haters will argue that Ripple's Answer didn't prove the SEC's allegations wrong and Ripple admitted to certain distributions of XRP.

No Shit, Sherlock. Ripple has distributed and sold XRP, at times, at a discount. That doesn't make it a security. Most importantly, Ripple doesn't have to prove anything, yet. The SEC must prove that XRP is a security. All Ripple had to do, thus far, was answer the Complaint.

Ripple simply provided "notice" of a few basic arguments and defenses it will rely on. One, the SEC lacks the proper authority to regulate XRP. Two, no regulator in the rest of the World claims XRP is a security. Three, the US Government has already classified XRP as virtual

currency in 2015 and 2020. Four, XRP is exempt from the Securities Act because its the functional equivalent of currency in that it acts as a SOV, medium of exchange and a unit of account. Five, if it's not a currency, then it's a commodity like gold, silver, oil, or #Ethereum.

Lastly, the SEC should be barred from claiming XRP is a security because it violates fundamental fairness, Due Process and Fair Notice. I find this defense (it's titled as the Fourth Defense in the Complaint), very intriguing. I'm sure Ripple's lawyers will be armed with case law

that supports an argument that the government should be estopped from making this claim at this point in time. In a previous tweet or when I was on @on_the_chain or on @davidgokhshtein I referenced this type of argument by alluding to the doctrine of equitable estoppel.

Basically, that doctrine protects one party from being harmed by another party's voluntary conduct. That conduct may be an action, or silence, or acquiescence. This doctrine is rarely used against a government entity and I'm not saying that it specifically applies to this case.

I'm only explaining that Ripple's lawyers have encapsulated that concept or doctrine and weaved it into a Due Process / Fair Notice argument. Brilliant! Using the 2015 DOJ and FinCen settlement with their classification of XRP as "convertible virtual currency" coupled with the

SEC allowing XRP to be openly traded along with #BTC and #ETH for 8 years gave any person or company the reasonable belief that XRP would not be prohibited. In short, under the law and circumstances, Ripple lacked fair notice that it's conduct was prohibited. If Ripple's lawyers

are able to provide case law and precedent that strongly supports this argument they will have the SEC backpedaling during the case. Anyways, these are some of my initial thoughts after the first read of the Answer. There is much more to unpack, but that's for another Thread.■